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ABSTRACT

Intended as a resource both for Hearing Officers who must officiate at due process hearings mandated by the Education for All Handicapped Children Act to determine the educational status of handicapped children, and for those responsible for the training of such officers, the manual outlines relevant information concerning due process, including a recommended step-by-step procedure for preparing for and conducting a hearing and writing a decision. The litigation and legislation granting handicapped children the right to education is reviewed, and an overview is presented of due process, including such aspects as due process procedures for parents and children, protection in evaluation procedures, confidentiality of information, and the Least Restrictive Environment concept. The role of the Hearing Officer is reviewed, and includes the federal requirements relating to such things as the impartial hearing and hearing rights. A sample hearing decision, a master checklist of important concepts covered in the manual, and answers to the self-test questions at the end of each manual chapter are appended. (DLS)

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DUE PROCESS IN SPECIAL EDUCATION

A Step-by-Step Resource Manual for Hearing Officers

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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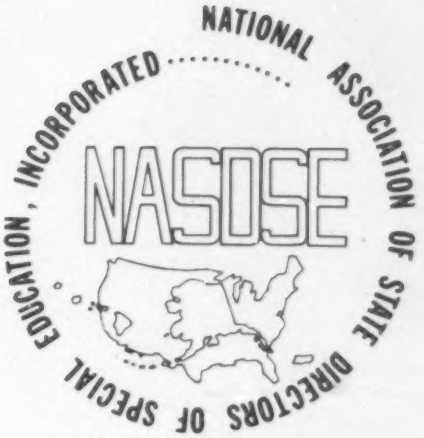

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1978

PREFACE

This is a manual designed to serve as a resource for two major audiences: persons who will function as impartial due process hearing officers in special education, and State and Local Education Agency officials who must develop procedures for the training of hearing officers. To meet this end, companion training resources—three slide-tape presentations, case studies, and a set of simulation exercises—are also available from NASDSE, Inc.

This manual was developed by the Special Training Project of NASDSE, Inc., in cooperation with a number of individuals and organizations who contributed to the concept and organization of the original manuscript.

We wish to acknowledge the able assistance of:

- Roberta Gottesman, Children's Legal Rights and Training Program, Washington, D.C.
- Catherine Reilly, Center for Educational Innovation, Columbus, Ohio.
- Dr. Richard Weatherman, Department of Educational Administration, University of Minnesota, Minneapolis.
- Dr. Carol Michaelis, Assistant Professor, Trinity College, Washington, D.C.
- F. Merritt Ruhlen, Federal Administrative Law Judge, Retired, Alexandria, Va.
- Dr. Judith Wolf, Student, University of Minnesota School of Law, Minneapolis.

The manual has been field tested in its developmental stages at workshops for the training of hearing officers in Scottsdale, Arizona in February 1978, and in Montgomery, Alabama in April 1978. We appreciate the cooperation of the respective State Education Agencies and of the 80 participants in those sessions who provided valuable feedback for determining the final format and content.

Special recognition must be given to Eileen Lavine, Bethesda, Maryland, for her editorial assistance in transmitting the original manuscript into final published form.

James Button, William V. Schipper, and Gary Snodgrass of the NASDSE staff provided the major portion of the philosophy, content, and format of the manual.

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THE DUE PROCESS HEARING IN BRIEF

THE MANDATE: Public Law 94-142, The Education for All Handicapped Children Act of 1975, requires that all handicapped children and their parents receive the benefit of due process and procedural safeguards in all matters relating to the child's educational status or the provision of a free appropriate public education. An Impartial Due Process Hearing is one of these safeguards.

THE PURPOSE: Hearings are intended to provide an opportunity for parents and the school to present their views concerning the educational status of the child before an unbiased individual—the Hearing Officer. The Hearing Officer is responsible for reaching a fair and impartial decision about the child's educational status based on the facts of the case and the best interests of the child.

THE TIMING: Hearings may be requested at any time after a child has been identified as a possibly handicapped child.

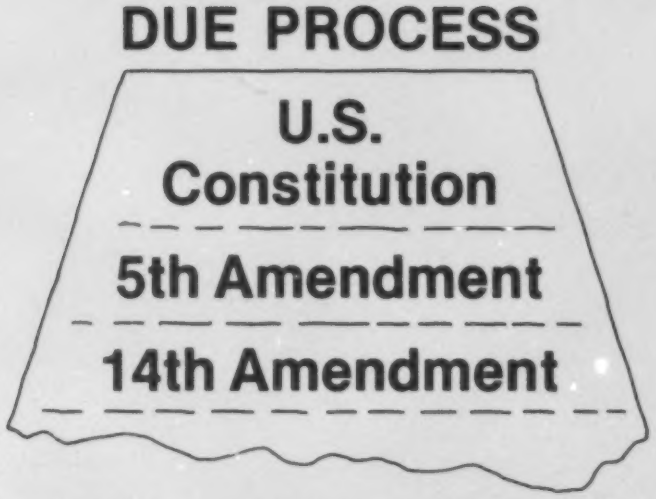
THE PARTICIPANTS: Hearings may be requested by parents, school district, or other persons who have primary responsibility.

THE CIRCUMSTANCES: Hearings may be requested when any issue arises regarding the evaluation or educational placement of a child, or when the provision of a free appropriate public education cannot be resolved.

AFTER A HEARING: If any party disputes the decision of the Hearing Officer, or is denied an impartial hearing, the following steps may be taken:

—State Level Review
—Appeal to the Courts

I. INTRODUCTION



Purpose of The Manual

This manual outlines concisely and clearly the relevant information concerning due process for Hearing Officers, including a recommended step-by-step procedure for preparing for a hearing, conducting a hearing, and writing a decision.

The position of Hearing Officer is a direct result of recent legislation and court decisions recognizing the right to education for handicapped children, based on the dual concepts of equal protection and due process of law, which originate in the Fifth and Fourteenth Amendments of the United States Constitution.

Due process of law essentially means the principles and procedures which guarantee fair treatment and protect the rights of all individuals. In special education, due process requires fair procedures when and if changes are made or proposed in a child's educational placement.

A hearing may not be necessary in making such decisions. But if there are conflicts or disagreements concerning the best educational placement for the child, a hearing provides an opportunity for parents and the public agency to present their views before an unbiased individual—the Hearing Officer. The Hearing Officer is responsible for reaching a fair and impartial decision about the child's educational status, based on the facts presented during the hearing.

There are five types of hearings, and in each instance the issues and procedural safeguards are somewhat different. These five types are:

1. **Hearings on the provision of notice:** An example of such a situation would be where a parent initially gives consent to a placement, but later revokes this consent, arguing that a full explanation of parental rights was not provided.

2. **Hearings on identification:** A Hearing Officer may encounter a situation where screening has identified a child as potentially handicapped and the parent requests a hearing claiming that the child is not handicapped and should not have been thus identified.

3. **Hearings on evaluation:** In such a situation, an agency may seek to evaluate a child after the parents have refused to give their consent for an evaluation.

4. **Hearings on placement:** In this type of hearing there is likely to be a substantial difference between each party's concept of the most appropriate placement. Within such a consideration, a complex of safeguards—evaluation, due process, and least restrictive environment—come into review.

5. **Hearings on the provision of a free appropriate public education:** This situation may well arise when the parent initiates a hearing to request public school placement for a child currently in a private facility, or for a child who is currently not being served by the public schools. Again, this type of a hearing may be used if supplementary services such as psychotherapy are being requested. Here, too, the procedural safeguards of evaluation, due process, and least restrictive environment apply.

The procedures presented in this manual have been developed to allow for optimum procedural fairness and simplicity of administration. Due to the paucity of federal requirements governing the conduct of due process hearings, and in cases where specific state requirements do not apply, the Hearing Officer should use reason and fairness as guidelines in the conduct of the hearing. We have attempted in the following pages to balance "good legal practice" with the necessity for rendering an educationally sound decision. The procedures and safeguards which have been established are for the ultimate purpose of insuring a judicious decision re-

garding the identification, evaluation, and placement of handicapped children, in order to assure that all such children will receive a free appropriate public education in line with both the letter and spirit of the law.

How to Use The Manual

Specific procedures outlined in the manual are predicated on a fairly complex hearing, involving issues of placement or the provision of a free appropriate public education. Obviously, a less involved hearing will permit a simpler proceeding. Nevertheless, a complete review of the procedures and examinations required for the more complex type of hearing should be advantageous for all persons preparing to serve as Hearing Officers.

The manual is divided into three main sections:

Background

Background of "right to education" legislation and litigation. This section provides orientation for the person wishing to know the steps that have led to establishment of the concept of the right to education for handicapped children.

Due Process

Overview of due process—presents item by item the relevant information concerning procedural safeguards as mandated by federal guidelines. The person seeking only specific guidance on preparing for and conducting a hearing may wish to merely glance through this section and move immediately to the next section.

Role of Hearing Officer

The role of the Hearing Officer is covered in three chapters relating to: (a) prehearing responsibilities, (b) hearing procedures, and (c) writing the decision.

These sections address each function of the Hearing Officer sequentially, with introductory checklists to guide the process. A master checklist is included and can be used to check off each applicable function as it is completed.

A self-test has been placed at the end of each of these chapters to measure the reader's understanding of the contents of that section.

II. BACKGROUND

Right to Education Litigation and Legislation

This chapter covers the following subjects:
***The Constitutional position of a right to education**
***The basis of right to education litigation**
***Federal case law**
***Federal legislation**

Constitutional Position

There is no U.S. Constitutional protection directly relating to the right to education for handicapped children. Indeed, a recent U.S. Supreme Court decision in San Antonio Independent School District v. Rodriguez (411 U.S. 1, 1973) has taken the position that a right to education is not a fundamental constitutional right. Since the Rodriguez decision related to public school financing and not to the education of handicapped children, a definitive decision on the right to education for handicapped children does not exist.

Basis of Right to Education

The basis for the currrent right to education cases may be traced to the landmark decision in Brown v. The Board of Education in 1954. In this decision, the U.S. Supreme Court stated:

> "Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. Today, it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." (347 U.S. 483, 493).

The Brown decision related to public school segregation on the basis of race, but the fundamental positions in the decision formed the basis of future arguments relating to handicapped children.

Federal Case Law

The most useful concepts pertaining to formulation of a right to education argument emanate from two principies in the Fifth and Fourteenth Amendments to the U.S. Constitution: equal protection and due process.

Equal protection means that individuals in similar circumstances must receive similar treatment. Due process relates to the use of fair procedures in reaching a determination.

These two concepts are stated clearly in the landmark cases relating to the right to education for handicapped children: Pennsylvania Association for Retarded Children (PARC) v. Commonwealth of Pennsylvania, 334 F. Supp. 1257 (E.D. Pa. 1971) and Mills v. Board of Education of District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

The PARC case was brought before the court by the parents of 14 mentally retarded children and all other children similarly situated. The court approved a stipulation providing that no mentally retarded child could be reassigned or initially assigned to either a special education class or a regular classroom or could be excluded from a public school without a hearing before a hearing officer.

In addition, the court outlined a comprehensive 23-step due process procedure to be utilized in making any changes relating to a mentally retarded child's educational status.

In the PARC decree, the court stated that:

> ". . . a mentally retarded person can benefit at any point in his life and development from a program of education."

The court, in reacting to its belief in the benefits of education, went on to require the state to locate, evaluate, and reevaluate all school-aged children who had been excluded from the public school. Public schools were required to provide retarded children with a free, appropriate education preferably in a regular class.

Whereas the PARC decision specifically concerned mentally retarded children, the Mills decision extended the due process procedures applied in PARC to all handicapped children. The Mills case established two basic safeguards applying to the public education of handicapped children:

First, exclusion from a public school program could not take place unless suitable, alternative educational services were provided, and

Second, there must be a prior due process hearing and periodic review of the child's educational status and progress.

Both the Mills and PARC cases established an increasingly important educational concept that has come to be termed "the least restrictive environment." The foundation of this concept as stated in PARC is as follows:

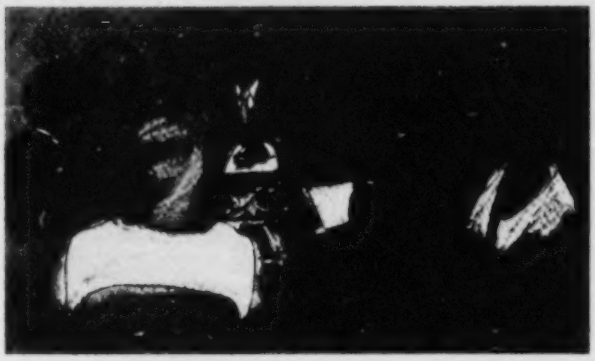
> ". . . among the alternative programs of education and training required by statute to be available, placement in a regular public school class is preferable to placement in a special public school class, and placement in a special public school class is preferable to placement in any other type of education and training (343 F. Supp. 307)."

Federal Legislation

Although the Constitution does not provide the right to education specifically, this did not serve as an impediment to Congressional action. Reacting to rising parental demands and improved educational technology demonstrated during the right to education litigation, Congress in a nearly unanimous vote enacted Public Law 94-142, the Education for All Handicapped Children Act of 1975.

Congress recognized that the education of all children is a responsibility of state government. Nevertheless, Congress also asserted the Federal responsibility of providing financial assistance to the states in order to provide additional funds for the education of handicapped children. In return for these funds, PL 94-142 requires each state to adopt policies and procedures that are consistent with the Act and that guarantee the right to education for all handicapped children.

PL 94-142 expands the due process procedures set out in the prior litigation relating to right to education and the initial codification contained in PL 93-380 (Education Amendment of 1974). That law required the provision of notice to parents and the opportunity for an impartial hearing, prior to the



change of any educational program for handicapped children.

PL 94-142 expanded these provisions to include the right to counsel, the right to examine witnesses, the right to a verbatim record of the hearing, and the right to a written decision within a specified time period. *PL 94-142 and the Office of Education regulations implementing the law represent the most comprehensive statement of due process pertaining to handicapped children to date.*

An associated piece of legislation, the Rehabilitation Act of 1973, contains provisions within Section 504 that also affect the education of handicapped children. Essentially, the Rehabilitation Act of 1973 is a statement of civil rights for the handicapped. Section 504 of the Act states:

> "No otherwise qualified handicapped individual in the United States as defined, shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance."

The provisions of Section 504 apply to all programs receiving Federal assistance, regardless of level: pre-school, elementary, secondary, post-secondary, adult, or vocational. The regulations published to implement the Act specifically state that they were developed to conform to the provisions included in PARC, Mills, and PL 94-142.

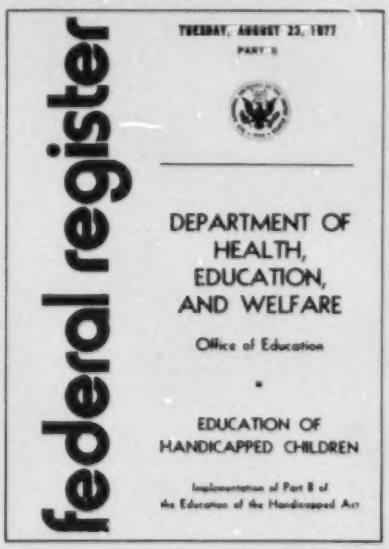
Section 504 carries sanctions in that noncompliance can involve the loss of all Federal dollars, whereas previous noncompliance with PL 94-142 endangered only the dollars allocated under the Act. Consequently, although Section 504 does not actually extend the due process procedures, it does reinforce the provision of PL 94-142 through the addition of more extensive penalties for noncompliance.

III. OVERVIEW OF DUE PROCESS

This chapter covers the following subjects:

- **Due Process procedures for parents and children**
- **Protection in evaluation procedures**
- **Least restrictive environment (LRE)**
- **Confidentiality of information**

All State and Local Educational Agencies can be expected to move toward bringing their individual procedures in line with the requirements of PL 94-142, as outlined in the rules and regulations of the Office of Education, published in the Federal Register of August 23, 1977.


federal register
TUESDAY, AUGUST 23, 1977
PART II
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Office of Education
EDUCATION OF HANDICAPPED CHILDREN
Implementation of Part B of the Education of the Handicapped Act

Subpart E of these rules and regulations addresses the issue of Procedural Safeguards, and the information that follows is extracted and summarized from this Subpart. In instances where state or local procedures are in conflict with the procedures presented in this section, that variance must be considered to be a case of noncompliance with Federal guidelines.

DUE PROCESS PROCEDURES FOR PARENTS AND CHILDREN

Definitions of "consent," "evaluation," and "personally identifiable."

a. *Consent*—The parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought. The parent understands and agrees in writing to the action and understands that such consent is voluntary.

b. *Evaluation*—Procedures used to determine if a handicap exists and the nature and extent of special education and related services required. The term does not refer to basic tests used with all children as part of a standard schoolwide testing program.

c. *Personally identifiable*—Information that is personally identifiable includes:

(1) the name of the child, the child's parent, or other family members,

(2) the address of the child,

(3) a personal identifier such as a social security number or student number,

(4) a list of characteristics or other information that would make identification possible with reasonable certainty.

Independent Educational Evaluation

a. *General*—The parents of a handicapped child have a right to obtain an independent evaluation of the child.

(1) Each public agency shall provide to parents, on request, information about where such an evaluation may be obtained.

(2) Independent educational evaluation—an evaluation conducted by a qualified examiner who is not employed by the public agency.

b. *Public expense*—A parent has the right to such an evaluation at public expense if the parent disagrees with the agency's evaluation. However, the agency may request a hearing to show that its evaluation is appropriate.

c. *Parent-initiated evaluations*—If the parent obtains an evaluation at private expense, it must be considered in any hearing.

d. *Request for evaluation by Hearing Officers.* If such an independent evaluation is requested, it must be at public expense.

e. *Agency criteria*—If an independent evaluation is conducted at public expense, the same criteria must be used as are used by the public agency in conducting an evaluation.

Prior Notice, Parent Consent

a. *Notice*—Written notice is required before a public agency:

(1) initiates or changes the identification, evaluation, or placement, or

(2) refuses to do so.

b. *Consent*—Parental consent must be obtained before:

(1) a preplacement evaluation,

(2) initial placement.

c. *Parent refusal to consent*—If the parent refuses to give consent to an action and the public agency decides to persist in its action, one of two procedures are to be followed:

(1) Where state law requires parental consent—state procedures pertain;

(2) Where there is no state law requiring consent—the hearing procedures may be used.

Content of Notice

Notice *must* include:

a. a complete explanation of all Subpart E safeguards,

b. a description of the action proposed or refused, an explanation for such action, and a description of considered options and why they were rejected,

c. a description of each evaluation procedure, test, record, or report used as a basis for the action,

d. any additional relevant factors.

The notice must be:

a. written in understandable language,

b. provided in native language or other mode of communication used by the parent,

c. if such language or mode of communication is not a written language, the agency shall insure that the parent receives an oral or other translation, that the parent understands the content, and that written evidence of such is obtained.

Impartial Due Process Hearing:

a. Either the parent or the agency may initiate a hearing regarding the identification, evaluation, placement, or provision of a free appropriate public education.

b. The hearing must be conducted by the responsible agency under state statute, regulations, or written policy,

c. The agency shall inform the parent of any free or low-cost legal or relevant service.

Comments on mediation: In the comments following this section in the rules and regulations, the Office of Education discusses mediation as an intervening step prior to a formal due process hearing. The comment points out that mediation is not required, but that it can serve a useful function in the resolution of differences. However, the comment clearly states that mediation may not be used to deny or delay a parent's rights to a hearing.

Impartial hearing officer—A hearing may not be conducted by:

a. a person who is an employee of the agency involved,

b. any person having a personal or professional conflict,

NOTE: A person is not in conflict solely because he or she is paid by the agency to serve as a hearing officer.

c. Each agency shall keep a list of persons, including a statement of qualifications of each person, who serve as hearing officers.

Comments: The comment section specifies that a parent of the child in question and school board officials are disqualified from acting as hearing officers under 121a.508.

Hearing rights:

a. Any party to a hearing may:

(1) be accompanied and advised by counsel and/or individuals with special knowledge of handicapped children,

(2) present evidence,

(3) confront, cross-examine and compel the attendance of witnesses,

(4) prohibit the introduction of evidence that has not been disclosed at least five days prior to the hearing,

(5) obtain a written or electronic verbatim record of the hearing,

(6) obtain written findings of facts and decisions.

b. Parents involved in the hearing must have the right to:

(1) have the child present,

(2) open or close the hearing to the public.

Comments: The Office of Education states that although no provision has been included relating to the cost of the verbatim record of the hearing, it is

expected that a copy of any decision would be provided at no cost.

Hearing Decision Appeal

A decision made in a hearing is final, unless either party appeals.

Administrative Appeal

a. If a hearing is conducted by an agency other than the State Education Agency (SEA), any party in the hearing may appeal to the SEA;

b. If such an appeal is made, the SEA shall conduct an impartial review that will:

(1) examine the entire hearing record,

(2) insure that due process requirements were met,

(3) seek additional evidence, if necessary,

(4) afford the opportunity for oral or written arguments, or both, at the SEA's discretion,

(5) make an independent decision,

(6) provide a written copy of the finding to the parties.

Civil Action

Civil action, an appeal to the courts, is a remedy where appropriate. The question of exhaustion of remedies remains to be decided by the courts and is particularly relevant with regard to the necessity of completing the hearing and administrative review processes prior to a civil action.

Timeliness

a. The public agency shall insure that not later than 45 days after the receipt of a request for a hearing:

(1) a final decision is reached,

(2) a copy of the decision is sent to the parties.

b. The SEA shall insure that not later than 30 days after a request for a review:

(1) a final decision is reached,

(2) a copy of the decision is sent to the parties.

c. A hearing or reviewing officer may grant specific time extensions at the request of either party.

d. Hearings and reviews involving oral arguments must be at a time and place that are reasonably convenient to the parents and child involved.

Child's Status During Proceedings

a. During any pending proceeding, the child must remain in the present educational placement unless the parents agree otherwise.

b. If the complaint involves initial admission to a public school, if the parent agrees, the child must be placed in the public school program except when the child's behavior is so disruptive that the education of other children is significantly impaired (See Comments, Section 121a522, p. 42513 of Federal Register of August 23, 1977).

Surrogate Parents

a. *General.* Each agency shall insure that the rights of a child are protected when:

(1) no parent can be identified,

(2) the parents cannot be located,

(3) the child is a ward of the state.

b. Persons selected as surrogates:

(1) shall have no conflicting interest,

(2) shall have the knowledge and skills to provide adequate representation.

c. A person so assigned may not be an employee of the public agency.

Comments: Agencies may not appoint a surrogate when parents are uncooperative or unresponsive.

PROTECTION IN EVALUATION PROCEDURES

This section concerns the establishment of nondiscriminatory testing procedures for use in the evaluation and placement of handicapped children.

Placement Evaluations

Before any action is taken regarding initial placement, a full and individual evaluation must be conducted.

Evaluation Procedures

a. Tests and evaluative materials must:

(1) be administered in the child's native language,

(2) be validated for the purpose for which they are used,

(3) be properly administered by trained examiners.

b. No single procedure shall be used as the sole determining criterion.

c. The evaluation is to be made by a multidisciplinary team, including at least one teacher or specialist with knowledge in the area of the suspected disability.

d. The child is assessed in all areas related to the suspected disability.

Placement Procedures

In interpreting data and in making placement decisions, each agency shall:

a. draw on a variety of information,

b. insure the documentation of all sources of information,

c. insure that the placement decision is made by a group of persons,

d. insure that the placement decision is made in accordance with the least restrictive environment rules.

Reevaluation

a. Individualized education programs (IEP) must be reevaluated at least annually.

b. Placement evaluations must be conducted every three years, or more frequently if requested by parent or teacher.

LEAST RESTRICTIVE ENVIRONMENT (LRE)

General. Each public agency shall insure that:

a. to the maximum extent appropriate, handicapped children are educated with children who are not handicapped,

b. special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

Continuum of Alternate Placements

a. Each public agency shall insure that a continuum of alternate placements is available;

b. This continuum must include instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions, as well as provision of supplementary services such as resource rooms or itinerant instruction.

Comments: The Office of Education states that the purpose of a continuum is to be able to accommodate to differences between handicapped children in terms of the degree of special assistance they need to receive a free appropriate public education. Further, the Office notes that the LRE provision is designed to protect against indiscriminate placement of a child in a separate facility solely because the child is handicapped and not because service is needed in the particular setting. The Office of Education suggests that it may be possible to meet the regular setting goal with severely handicapped children by having a separate class or wing in a regular school building.

Placements

Each public agency shall insure that:

a. each education placement
(1) is determined at least annually,
(2) is based on the child's IEP,
(3) is as close to home as possible;

b. each handicapped child is educated in the school which he or she would attend if not handicapped, unless otherwise required in the IEP;

c. that in selecting the LRE, consideration is given to any potentially harmful effect on the child or the quality of services needed such as a regular classroom or resource room.

Comments: The Office of Education points to the analysis of the Section 504 regulations as pertinent to this section:

> ". . . it should be stressed that, where a child is so disruptive in a regular classroom that the education of other students is significantly imparied, the needs of the handicapped child cannot be met in that environment. . . . Among the factors to be considered in placing a child is the need to place the child as close to home as possible."

CONFIDENTIALITY OF INFORMATION

Access Rights

Each agency shall permit parents to inspect and review educational records prior to an IEP meeting or a hearing, or in no case more than 45 days after the request has been made.

Record of Access

Each agency shall keep a record of parties obtaining access to records, including name, date given, and purpose.

List of Types and Locations of Information

On request, parents must be provided a list of the types and locations of educational records.

Fees

An agency may charge a fee if it does not interfere with the parent's right to inspect and review those records.

Comments: Although the Office of Education recognizes the right to charge a fee for records, it encourages public agencies to make copies available free of charge.

SELF-TEST QUESTIONS

Right to Education and Overview to Due Process

(Answers on page 50)

Right to Education Decisions

The following cases addressed issues important to the rights of handicapped children and their parents:

A. Brown v. The Board of Education

B. Pennsylvania Association of Retarded Children v. Commonweath of Pennsylvania (PARC case)

C. Mills v. Board of Education of the District of Columbia

In the following statements, insert the alphabet letters appropriate for the findings of the above case(s).

1. _____ Was first in stipulating due process procedures relating to free appropriate educational programming for the mentally retarded.
2. _____ Extended due process procedures to all handicapped children.
3. _____ Both of these cases addressed the concept of least restrictive environment.
4. _____ Ruled against exclusion of handicapped children from public education programs.
5. _____ Stipulates that mentally retarded children cannot be placed or excluded from public school without a hearing before a hearing officer.
6. _____ Rules that it is unreasonable to expect children to succeed in life without the opportunity of an education.

Legislation Affecting the Education of Handicapped Children

(A) PL 93-380 (B) PL 94-142 (C) Section 504

The above laws provide for specific rights regarding handicapped children's education.

Place the appropriate alphabet letter before the following statements:

7. _____ Was first to require that notice be given to parents regarding any educational program change for their handicapped child(ren).
8. _____ Was first to provide parents of handicapped children with the opportunity for impartial hearings regarding educational programming or placement decisions.
9. _____ Guarantees handicapped persons protection from discrimination in federally funded programs.
10. _____ Provides federal funds to assist states in educating handicapped children.
11. _____ Expands upon earlier due process legislation to include right to counsel, examine witnesses, verbatim hearing record and written decision.
12. _____ States that noncompliance by an agency can involve loss of all federal monies.

Due Process Provisions Under PL 94-142

Define the following as intended under PL 94-142:

Consent:

Evaluation:

Personally identifiable:

Notice:

Civil Action:

IV. ROLE OF THE HEARING OFFICER

This chapter covers the Federal requirements relating to:

- **The Impartial Due Process Hearing**
- **The Impartial Hearing Officer**
- **Hearing Rights**
- **Critical Definitions**

FEDERAL REQUIREMENTS

Only a limited number of requirements according to Federal rules and regulations must be fulfilled. In some instances, states will impose additional requirements. These additional requirements should be outlined in the policies developed by the local agencies and made available to the Hearing Officer. These local agency policies will be primarily expansions of Federal requirements.

The requirements in the Federal Register relating to the hearing process are contained in Sections 121a.506, 121a.507, and 121a.508. These parts relate to (1) the impartial due process hearing, (2) the impartial hearing officer, and (3) hearing rights.

Since these three parts represent the sum total of the federally-required procedures, they will be discussed one at a time. In addition, the appropriate sections of the Federal Register are presented for exact reference.

IMPARTIAL DUE PROCESS HEARING

The requirements specified in Section 121a.506 relating to the Impartial Due Process Hearing fall into three parts: 1) who may initiate a hearing and on what matters, 2) under whose auspices the hearing is to be conducted, and 3) providing information to the parent on free or low-cost legal and other services.

§ 121a.506 Impartial due process hearing.

(a) A parent or public educational agency may initiate a hearing on any of the matters described in § 121a.504(a)(1) and (2).

(b) The hearing must be conducted by the State educational agency or the public agency directly responsible for the education of the child, as determined under State statute, State regulation, or a written policy of the State educational agency.

(c) The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(1) The parent requests the information; or

(2) The parent or the agency initiates a hearing under this section.

(20 U.S.C. 1416(b)(2).)

Comment: Many States have pointed to the success of using mediation as an intervening step prior to conducting a formal due process hearing. Although the process of mediation is not required by the statute or these regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. Mediations have been conducted by members of State educational agencies or local educational agency personnel who were not previously involved in the particular case. In many cases, mediation leads to resolution of differences between parents and agencies without the development of an adversarial relationship and with minimal emotional stress. However, mediation may not be used to deny or delay a parent's rights under this subpart.

Comments:

IMPARTIAL DUE PROCESS HEARING (§ 121a.506)

Comment: A commenter asked that the regulations specify that the public agency must pay for the hearing.

Response: The change requested by the commenter has not been made. Since the statute requires that the public agency must afford parents an opportunity for a hearing, the agency must bear the cost of the hearing, except for paying for parents' representatives and witnesses. However, section 121a.506 has been amended to require agencies to provide parents with information about free or low-cost legal and other relevant services that are available.

Initiating the Hearing

The regulations clearly indicate that either a parent or the public agency may initiate a hearing, but the hearing must pertain to those matters described in Section 121a.504(a)(1) and (2), reproduced below:

§ 121a.504 Prior notice; parent consent.

(a) *Notice.* Written notice which meets the requirements under § 121a.505 must be given to the parents of a handicapped child a reasonable time before the public agency:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

In other words, Section 121a.504 establishes the concept of notice and the following specific jurisdictional areas in which the agency has proposed to act or has refused to act concerning the child: initiating or changing the identification, evaluation, educational placement, and provision of a free appropriate public education.

Each of these areas is discussed in more detail below, followed by further discussion of notice:

1. *Identification.* Section 121a.128 requires that each state education agency must detail the policies and procedures within the state's Annual Program Plan to insure that all children in need of special education and related services are identified, located, and evaluated.

§ 121a.128 Identification, location, and evaluation of handicapped children.

(a) *General requirement.* Each annual program plan must include in detail the policies and procedures which the State will undertake or has undertaken to insure that:

(1) All children who are handicapped, regardless of the severity of their handicap, and who are in need of special education and related services are identified, located, and evaluated:

Consequently, a parent or the local education agency (LEA) may request a hearing concerning the question of the initial identification of the child as to whether the child is or is not identified properly as a handicapped child.

2. *Evaluation:* Parents may also challenge the evaluation of a child, provided by the school district, or they may refuse to give consent for evaluation. Disputes regarding evaluation procedures are covered in Sections 121a.530, 531, and 532, reproduced below:

PROTECTION IN EVALUATION PROCEDURES

§ 121a.530 General.

(a) Each State educational agency shall insure that each public agency establishes and implements procedures which meet the requirements of §§ 121a.530-121a.534.

(b) Testing and evaluation materials and procedures used for the purposes of evaluation and placement of handicapped children must be selected and administered so as not to be racially or culturally discriminatory.
(20 U.S.C. 1412(5)(C).)

§ 121a.531 Preplacement evaluation.

Before any action is taken with respect to the initial placement of a handicapped child in a special education program, a full and individual evaluation of the child's educational needs must be conducted in accordance with the requirements of § 121a.532.
(20 U.S.C. 1412(5)(C).)

§ 121a.532 Evaluation procedures.

State and local educational agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child; and

(e) The evaluation is made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability.

(f) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.
(20 U.S.C. 1412(5)(C).)

Comment. Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist would (1) evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and (2) where necessary, make referrals for additional assessments needed to make an appropriate placement decision.

3. *Placement Decisions:* Parents may challenge the placement decision of the LEA, or the LEA may wish to require the parent to accept a placement for which the parent refuses to grant consent. Section 121a.533 relates to placement, and is reproduced below:

§ 121a.533 Placement procedures.

(a) In interpreting evaluation data and in making placement decisions, each public agency shall:

(1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior;

(2) Insure that information obtained from all of these sources is documented and carefully considered;

(3) Insure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and

(4) Insure that the placement decision is made in conformity with the least restrictive environment rules in §§ 121a.550-121a.554.

(b) If a determination is made that a child is handicapped and needs special education and related services, an individualized education program must be developed for the child in accordance with §§ 121a.340-121a.349 of Subpart C.

(20 U.S.C. 1412(5)(C); 1414(a)(5).)

Comment. Paragraph (a) (1) includes a list of examples of sources that may be used by a public agency in making placement decisions. The agency would not have to use all the sources in every instance. The point of the requirement is to insure that more than one source is used in interpreting evaluation data and in making placement decisions. For example, while all of the named sources would have to be used for a child whose suspected disability is mental retardation, they would not be necessary for certain other handicapped children, such as a child who has a severe articulation disorder as his primary handicap. For such a child, the speech-language pathologist, in complying with the multisource requirement, might use (1) a standardized test of articulation, and (2) observation of the child's articulation behavior in conversational speech.

4. *Free Appropriate Public Education:* the final jurisdictional category relates to the provision of a free appropriate public education, which is defined in Section 121a.4:

§ 121a.4 Free appropriate public education.

As used in this part, the term "free appropriate public education" means special education and related services which:

(a) Are provided at public expense, under public supervision and direction, and without charge.

(b) Meet the standards of the State educational agency, including the requirements of this part,

(c) Include preschool, elementary school, or secondary school education in the State involved, and

(d) Are provided in conformity with an individualized education program which meets the requirements under §§ 121a.340-121a.349 of Subpart C.

(20 U.S.C. 1401(18).)

Disputes which arise under this section are governed by the requirements set out in Section 121a.300. This section is extremely important in that it allows for state variability in terms of state-mandated ages of children to be served and court orders. Consequently, in the specified areas (Section 121a.300(b)(5)(i) and (ii), state requirements prevail:

FREE APPROPRIATE PUBLIC EDUCATION

§ 121a.300 Timeliness for free appropriate public education.

(a) *General.* Each State shall insure that free appropriate public education is available to all handicapped children aged three through eighteen within the State not later than September 1, 1978, and to all handicapped children aged three through twenty-one within the State not later than September 1, 1980.

(b) *Age ranges 3-5 and 18-21.* This paragraph provides rules for applying the requirement in paragraph (a) of this section to handicapped children aged three, four, five, eighteen, nineteen, twenty, and twenty-one:

(1) If State law or a court order requires the State to provide education for handicapped children in any disability category in any of these age groups, the State must make a free appropriate public education available to all handicapped children of the same age who have that disability.

(2) If a public agency provides education to non-handicapped children in any of these age groups, it must make a free appropriate public education available to at least a proportionate number of handicapped children of the same age.

(3) If a public agency provides education to 50 percent or more of its handicapped children in any disability category in any of these age groups, it must make a free appropriate public education available to all of its handicapped children of the same age who have that disability.

(4) If a public agency provides education to a handicapped child in any of these age groups, it must make a free appropriate public education available to that child and provide that child and his or her parents all of the rights under Part B of the Act and this part.

(5) A State is not required to make a free appropriate public education available to a handicapped child in one of these age groups if:

(i) State law expressly prohibits, or does not authorize, the expenditure of public funds to provide education to non-handicapped children in that age group; or

(ii) The requirement is inconsistent with a court order which governs the provision of free public education to handicapped children in that State.

(20 U.S.C. 1412(2)(B); Sen. Rept. No. 94-168 p. 19 (1975).)

Comment. 1. The requirement to make free appropriate public education available applies to all handicapped children within the State who are in the age ranges required under section 121a.300 and who need special education and related services. This includes handicapped children already in school and children with less severe handicaps, who are not covered under the priorities under § 121a.321.

2. In order to be in compliance with § 121a.300, each State must insure that the requirement to identify, locate, and evaluate all handicapped children is fully implemented by public agencies throughout the State. This means that before September 1, 1978, every child who has been referred or is on a waiting list for evaluation (including children in school as well as those not receiving an education) must be evaluated in accordance with §§ 121a.530-121a.533 of Subpart E. If, as a result of the evaluation, it is determined that a child needs special education and related services, an individualized education program must be developed for the child by September 1,

1978, and all other applicable requirements of this part must be met.

3. The requirement to identify, locate, and evaluate handicapped children (commonly referred to as the "child find system") was enacted on August 21, 1974, under Pub. L. 93-280. While each State needed time to establish and implement its child find system, the four year period between August 21, 1974, and September 1, 1978, is considered to be sufficient to insure that the system is fully operational and effective on a State-wide basis.

Under the statute, the age range for the child find requirement (0-21) is greater than the mandated age range for providing free appropriate public education (FAPE). One reason for the broader age requirement under "child find" is to enable States to be aware of and plan for younger children who will require special education and related services. It also ties in with the full educational opportunity goal requirement, which has the same age range as child find. Moreover, while a State is not required to provide "FAPE" to handicapped children below the age ranges mandated under § 121a.300, the State may, at its discretion, extend services to those children, subject to the requirements on priorities under §§ 121a.320-121a.324.

NOTICE: Parents may challenge a placement, evaluation, or identification of a child on the procedural grounds that the agency failed to give adequate notice. Notice is a complex requirement, but it is a clear obligation of the public agency to satisfy each of the requirements prior to initiating or refusing to initiate proposed changes. Hence any hearing relating to identification, evaluation, placement, or a free appropriate public education also involves notice and the requirements under Section 121a.505, which follows:

§ 121a.505 Content of notice.

(a) The notice under § 121a.504 must include:

(1) A full explanation of all of the procedural safeguards available to the parents under Subpart E;

(2) A description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected;

(3) A description of each evaluation procedure, test, record, or report the agency uses as a basis for the proposal or refusal; and

(4) A description of any other factors which are relevant to the agency's proposal or refusal.

(b) The notice must be:

(1) Written in language understandable to the general public, and

(2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

(c) If the native language or other mode of communication of the parent is not a written language, the State or local educational agency shall take steps to insure:

(1) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication;

(2) That the parent understands the content of the notice, and

(3) That there is written evidence that the requirements in paragraph (c) (1) and (2) of this section have been met. (20 U.S.C. 1415(b)(1)(D))

All aspects of the Content of Notice must be verified by the Hearing Officer at some time, either prior to the hearing or during the hearing. A complete examination of public agency due process compliance should be made by the Hearing Officer prior to setting a hearing date.

If the hearing is not specifically directed toward a due process question, the Hearing Officer must insure that due process has been met so that the decision can be based upon the issue of the hearing. If due process has not been fully met, the Hearing Officer should provide an opportunity for the public agency to comply. However, if this is not accomplished prior to the hearing, it should be the first order of business when the hearing begins.

It does appear that a complete examination of the record for due process compliance prior to the hearing, with an opportunity to remedy any deficiencies, will save considerable time.

Auspices of The Hearing

The hearing must be conducted under the auspices of the public agency directly responsible for the child's education, according to state statutes or regulations.

Information on Free or Low-Cost Legal Aid

Information on free or low-cost legal and other services available in the area must be provided under two conditions: 1) if the parent requests it, or 2) if a hearing is initiated by either party under 121a.504.

Some consideration should be given to the term "other services" in this part. This may include parent groups or state or local affiliates of national organizations that often provide legal services, guidance, or information to enable individuals to locate competent legal and specialized counsel.

IMPARTIAL HEARING OFFICER

This is generally an exclusionary section, specifying who cannot function as a Hearing Officer: that is, an employee of the public agency or anyone with a conflict of interest.

The section also states that a person does not become an employee of the public agency solely because of employment as a Hearing Officer. Finally,

the section requires each public agency to maintain a list of persons serving as Hearing Officers including their qualifications.

§ 121a.507 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a public agency which is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer.

(c) Each public agency shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.
(20 U.S.C. 1414(b)(2).)

Comments:

IMPARTIAL HEARING OFFICER (§ 121a.507)

Comment: Commenters sought to have three-person panels, including parents, serve as the hearing officials. Some sought to allow and others sought not to allow school board officials from serving as hearing officials. Commenters also asked that lists of hearing officers be required, including their qualifications.

Response: A requirement has been added that each public agency keep a list of persons who serve as hearing officers and a statement of their qualifications. This should help to ensure that the requirement for impartiality is met. No other substantive change has been made. A three-person panel could be used under the existing rules, as long as the conditions of impartiality are met. However, a parent of the child in question and school board officials are disqualified under section 121a.508.

HEARING RIGHTS

Section 121a.508 lists the applicable hearing rights pertaining to *any* party. These rights obtain for either party to the hearing unless one party is identified specifically as the beneficiary of a right, as in (b) (1) and (2). The enumeration of rights includes:

a. the right to advice by counsel and by experts;

b. the right to present evidence and to confront, cross-examine, and compel witnesses,

c. the right to prohibit admission of any evidence which has not been disclosed at least five days in advance of the hearing,

d. the right to obtain a written *or* electronic verbatim record, and

e. the right to obtain written findings of fact and decisions.

In addition, the parents have the right to have the child present and have the hearing open to the public.

§ 121a.508 Hearing rights.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing;

(5) Obtain written findings of fact and decisions. (The public agency shall transmit those findings and decisions, after deleting any personally identifiable information, to the State advisory panel established under Subpart F).

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.
(20 U.S.C. 1415(d).)

Comments:

HEARING RIGHTS (§ 121a.508)

Comment: Commenters disagreed as to whether hearing rights set forth in the proposed rules should be expanded or restricted. Among the additional rights sought were the right to compel the attendance of witnesses, prohibit the introduction of evidence not disclosed prior to the hearing, allow the child to be present and the hearing to be open to the public at the parents' discretion, and to specify whether the record of the hearing must be free or at reasonable cost.

Response: The section has been revised to add rights for any party to prohibit the introduction of evidence not previously disclosed to the other party and for the child to be present and the hearing to be open to the public. The purpose of hearings under this part is to ensure that handicapped children are provided free appropriate public education. Opening up the hearing and the evidence that may be presented should serve to insure that the result of a hearing will be in the best interests of the child. No provision has been added relating to cost. However, it is expected that a copy of any decision would be provided to the parent at no cost.

Critical Definitions

The following definitions establish jurisdiction under PL 94-142 and the corresponding federal regulations:

Special Education. The comment following Section 121a.14, Special Education, is especially germane to the establishment of the Hearing Officer's authority:

> *Comment:* (1) The definition of "special education" is a particularly important one under these regulations, since a child is not handicapped unless he or she needs special education. (See the definition of "handicapped children" in section 121a.5.) The definition of "related services" (section 121a.13) also depends on this definition, since a related service must be necessary for a child to benefit from special education. Therefore, if a child does not need special education, there can be no "related services," and the child (because not "handicapped") is not covered under the Act.
>
> **§ 121a.15 Special education.**
>
> (a) (1) As used in this part, the term "special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.
>
> (2) The term includes speech pathology, or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child, and is considered "special education" rather than a "related service" under State standards.
>
> (3) The term also includes vocational education if it consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a handicapped child.
>
> (b) The terms in this definition are defined as follows:
>
> (1) "At no cost" means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nonhandicapped students or their parents as a part of the regular education program.
>
> (2) "Physical education" is defined as follows:
>
> (i) The term means the development of:
>
> (A) Physical and motor fitness;
>
> (B) Fundamental motor skills and patterns; and
>
> (C) Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports).
>
> (ii) The term includes special physical education, adapted physical education, movement education, and motor development.
>
> (20 U.S.C. 1401(16).)
>
> (3) "Vocational education" means organized educational programs which are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.
>
> (20 U.S.C. 1401(16).)

Handicapped Children. In addition to the definition of "special education" provided above, the definition of "handicapped children" is also relevant:

> **§ 121a.5 Handicapped children.**
>
> (a) As used in this part, the term "handicapped children" means those children evaluated in accordance with §§ 121a.530-121a.534 as being mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, other health impaired, deaf-blind, multi-handicapped, or as having specific learning disabilities, who because of those impairments need special education and related services.
>
> (b) The terms used in this definition are defined as follows:
>
> (1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.
>
> (2) "Deaf-blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.
>
> (3) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.
>
> (4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.
>
> (5) "Multihandicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.
>
> (6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., clubfoot, absence of some member, etc.), impairments caused by disease (e.g. poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).
>
> (7) "Other health impaired" means limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.
>
> (8) "Seriously emotionally disturbed" is defined as follows:
>
> (i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance:
>
> (A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;
>
> (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic or autistic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain disfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, of mental retardation, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which, even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.
(20 U.S.C.. 1401(1), (15).)

Summary

In summary, there are very few rules and regulations emanating from the Federal level that actually govern the hearing process. A majority of the Federal concerns are substantive, in that they specify requirements concerning the provision of services to handicapped children who are eligible for the protective features of the law.

Consequently, in order for the Hearing Officer to exercise his or her authority, it is necessary first to establish jurisdiction in at least two ways:

1. a determination that the child is handicapped according to the requirements of the Federal rules and regulations, and

2. a determination that the requested hearing relates to the matters set out in Section 121a.504(a)(1) and (2) above.

V. PREPARING FOR THE HEARING

This chapter covers the following subjects:

- **Precursors to a Hearing**
- **Prehearing Activities in relation to**
  - **Initial public agency contact**
  - **Inspection of public agency information**
  - **Examination of public agency compliance**
  - **Requests for further information**
  - **Prehearing contacts**
  - **Notification of hearing**
  - **Procedural arrangements**
  - **Preparation of an agenda**

INTRODUCTION

The role of the Hearing Officer will be approached in terms of an itemized, sequential list of responsibilities. In this way, a Hearing Officer may use this section as an annotated checklist to be consulted throughout the process.

Obviously, such a collection of suggestions will contain numerous references that are permissive rather than mandatory. These may be accepted or rejected depending on the individual Hearing Officer's unique style or personal preference. However, some of the more personal suggestions may be beneficial in helping the Hearing Officer set a tone that will result in a more productive hearing.

The basic content of a hearing emanates from the principles of equal treatment and due process. The hearing must be conducted with fairness, and the individual presiding at such a hearing must be impartial and independent. Moreover, such an individual must be able to disregard all prejudicial influences and conduct an unbiased examination of the information presented during the hearing.

PRECURSORS TO A HEARING

The selection of a Hearing Officer is predicated upon an impasse—a problem or a series of problems have arisen between parents of a handicapped child and the public agency. Among the possibilities may be the following:

a. The public agency has requested permission to evaluate the child and the parents have refused to give permission;

b. The public agency has suggested a change in the child's educational placement and the parents disagree with the plan.

At this time, the parents or the public agency request a hearing and, shortly after, a Hearing Officer is appointed by the State Education Agency or the local district.

PREHEARING ACTIVITIES

Initial Public Agency Contact

Checklist

__Contact public agency and request materials for review
__Obtain public agency policy
__Determine procedures
__Discuss hearing facilities

Activities of Hearing Officer:

a. Contact the public agency to introduce himself or herself and to request that all pertinent information be sent for review;

b. Request a copy of the public agency policy relating to hearings;

c. Determine procedures for recording, transcription, translators, and interpreters, and reimbursement procedures for these services;

d. Determine the possibility of using public agency or other facilities to hold hearing.

Inspection of Public Agency Information

Checklist

__Policy
__Parent release
__Consent for evaluation
__Prior notice
__Educational reports
__Cumulative record
__Social service report
__Individualized Education Program
__Informal mediation conference

Activities of Hearing Officer:

Inspect agency material to determine if all necessary information and history of the case are included. Depending upon the nature of the hearing, different materials will be required. These materials will include:

a. Copy of public agency policy on hearing procedures,

b. Copy of parent release of information,

c. Signed consent forms for preplacement evaluation,

d. Prior notice memorandum for change in identification, evaluation, and placement,

e. Reports from educational evaluations including standardized tests,

f. Reports from cumulative record and teacher evaluation of progress,

g. Reports from medical therapeutic, social service agencies, or other relevant evaluations,

h. Copy of the child's Individualized Education Program or proposed IEP,

i. Summary of informal mediation conferences.

Examination of Public Agency Compliance

Consent requirement:

Checklist

__Preplacement evaluation
__Initial placement

Activities of Hearing Officer:

Check consent requirement: Parental consent must be obtained prior to:

a. conducting a preplacement evaluation,

b. initial placement of a handicapped child in a program.

Prior notice requirement:

Checklist

__Content of notice
__Explanation to parent
examine records
independent educational evaluation
prior notice
parental consent
impartial hearing
impartial hearing officer
hearing rights
counsel
evidence
prohibit evidence
verbatim record
findings, decision
child present
open hearing
administrative appeal
civil action
timeliness
child's status
surrogate parents
__Description of
action
explanation
options
evaluation procedures
other relevant factors
__Notice must be
understandable
in native language
__Mode of communication
translated
understandable
written evidence

Activities of Hearing Officer:

Check information to see that the following requirements of prior written notice have been met:

Written Notice must be given to the parents of a handicapped child within a reasonable time before the public agency either proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education.

Content of the notice: The notice should contain a full explanation of all procedural safeguards available to the parents under Subpart E. Minimally, this explanation should include:

a. opportunity to examine records,
b. right to an independent education evaluation,
c. prior notice,
d. parental consent,
e. right to an impartial due process hearing,
f. impartial hearing officer,
g. hearing rights: The following rights apply to both parties:

(1) accompanied and advised by counsel or individuals with special knowledge;

(2) the right to open the hearing to the public. (Otherwise the hearing is closed.)

(3) prohibit introduction of evidence that has not been disclosed at least five days prior to the hearing;

(4) obtain a written or electronic verbatim record of the hearing,

(5) obtain written findings of fact and decisions.

In addition, the parents alone have the following two rights:

(1) the right to have the child present,

(2) the right to open the hearing to the public. (Otherwise the hearing is closed.)

h. administrative appeal,
i. civil action,
j. timeliness and convenience of hearing and review,
k. child's status during proceedings,
l. surrogate parent provisions.

The explanation also should have a description of:

a. the action proposed or refused by the agency;
b. an explanation of why the agency proposed or refused to take the action;
c. a description of any options the agency considered and the reasons why these options were rejected;
d. a description of each evaluation procedure, test, record, or report the agency used as a basis for its decision,
e. a description of any other relevant factors.

The notice must be:

a. written in a language understandable to the general public, and
b. provided in the parent's native language or other mode of communication used by the parent.

If the parent's native language or mode of communication is not a written language, the public agency shall see:

a. that the notice is translated orally or by other means,
b. that the parent understands the content of the notice,
c. that there is written evidence of (a) and (b).

Appropriate evaluation:

Checklist

__Test are
  in child's language
  validated
  properly administered
__Include specific tests
__Do not measure impairments
__No single procedure
__Multidisciplinary team
__Assessment in all areas
  health
  vision
  hearing
  social-emotional
  general intelligence
  academic performance
  communicative status
  motor ability

Activities of the Hearing Officer:

Check on whether the local agency has insured that:

a. Tests and other evaluation procedures:

(1) were provided and administered in the child's native language,

(2) have been validated for the purpose for which they are used,

(3) were administered by trained personnel.

b. Tests and evaluation material included those that measure specific areas of educational need and were not merely a global index of general knowledge.

c. Tests were selected and administered to represent accurately aptitude or achievement rather than

the child's impaired sensory, manual, or speaking skills (except where the test is specifically designed to measure these impairments).

d. No single procedure or instrument was used as the sole requirement in determining an educational program.

e. The evaluation was made by a multidisciplinary team or group including at least one teacher or specialist with knowledge in the suspected area of disability,

f. The child was assessed in all areas related to the suspected disability including, when appropriate:

(1) health,
(2) vision,
(3) hearing,
(4) social and emotional status,
(5) general intelligence,
(6) academic performance,
(7) communicative status,
(8) motor ability.

Appropriate placement procedures:

Checklist

__Decisions based on:
  aptitude tests
  teacher recommendation
  physical condition
  social/cultural
  adaptive behavior
__Documentation of source
__Decision by knowledgeable group
__Least restrictive environment:
  education with non-handicapped
  severity of handicap
  continuum
    regular class
    special class
    special school
    home instruction
    instruction in hospital
    supplemental services
    resource room
    itinerant teacher
  placement is
    determined annually
    based on IEP
    close to home
  continuum of services
  local school
  potential harmful effects

Activities of Hearing Officer:

Check that in making placement decision, the public agency has:

a. drawn upon information from a variety of sources including:

(1) aptitude and achievement tests,
(2) teacher recommendations,
(3) physical condition,
(4) social and cultural background,
(5) adaptive behavior.

b. insured that the source of this information is documented and considered,

c. insured that the placement decision is made by a group of persons, including persons knowledgeable about:

(1) the child,
(2) the meaning of the evaluation data,
(3) the placement options.

d. insured that the placement decision is made in conformity with the least restrictive environment (LRE) rules (Section 121a.550-554):

(1) that to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped;

(2) that special classes, separate schooling, or other removal of handicapped children from the regular educational environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;

(3) that a continuum of alternative placements exists and must include:

(a) regular classes,
(b) special classes,
(c) special schools,
(d) home instruction,
(e) instruction in hospitals and institutions,
(f) supplementary services such as resource room or itinerant instruction;

(4) that each educational placement:

(a) is determined at least annually,
(b) is based upon the IEP,
(c) is as close to home as possible;

(5) that the continuum of services is available to the extent necessary to implement the IEP;

(6) that unless the IEP requires other arrangements, the child is educated in the school which he or she would attend if not handicapped;

(7) that in selecting the least restrictive environment, consideration is given to any potential harmful effects on the child or on the quality of services needed. The latter point includes considering whether the placement of a specific handicapped child in a classroom may interfere with provision of instruction to other children.

Confidentiality of information

Checklist

__Access rights
- right to inspect records
  - explain and interpret
  - obtain copies
  - representative
- record of access
- location
- fees

__Hearing on amending or destroying information

Activities of Hearing Officer:

Check that the following aspects of confidentiality have been met:

a. Access rights:

(1) Each agency shall permit parents to inspect and review any educational records relating to their children which are collected, maintained, or used by the agency. The agency shall comply with such a request prior to an IEP meeting or a hearing, and in no case in more than 45 days after the request. The right to inspect records includes:

(a) response from public agency to explain and interpret the records,

(b) right to obtain copies, if failure to provide copies would prevent inspection and review,

(c) right to have a representative inspect and review records;

(2) Each agency shall maintain a record of access including name, date, and purpose;

(3) Each agency shall, on request, provide parents with a list of type and location of educational records,

(4) Fees may be charged for copies of records if this does not prevent access.

(Comment: The Office of Education states that agencies may adopt policies of providing copies free of charge and are encouraged to do so.)

b. Hearing:

Hearings to request the amendment or destruction of records are held under procedures specified in Section 99.22 of the Family Educational Rights and Privacy Act and will not be described here. Interested parties may refer to the regulations for this Act in 45 CFR 99.22. This type of hearing is different from that described in this manual, but because the comment regarding such a hearing is instructive it is reproduced below:

> **Hearing procedures (§ 121a.570)**
>
> *Comment:* A commenter requested clarification of who conducts a hearing.
>
> *Response:* The section states that the procedures under § 99.22 (the hearing procedures in the regulations for the Family Educational Rights and Privacy Act) be used. Section 99.22(b) states the hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing.

Evidence of required formal review

Checklist

__Required formal review

Activities of Hearing Officer:

Check into evidence of required formal review.

This section relates to certain state procedures that are required by state statutes or regulations. A prior informal review is not a Federal requirement, and any such requirement prior to a formal hearing is not included in the Federal law.

Comment: The Office of Education states in the comment section of 121a.506 that although the process of mediation is not required by the statute or the regulations, an agency may wish to suggest mediation in disputes concerning the identification, evaluation, and educational placement of handicapped children, and the provision of a free appropriate public education to those children. However, the Office of Education adds, mediation may not be used to deny or delay a parent's rights under this subpart.

Appointment of surrogate parents:

Checklist

__Rights of child
- no parent
- whereabouts unknown
- ward of state

__Selected by state law

Activities of Hearing Officer:

See that surrogate parents are appointed when necessary.

Each public agency shall insure that the rights of a child are protected when:

(a) no parent can be identified,

(b) the whereabouts of a parent cannot be discovered,

(c) the child is a ward of the state.

Comment: The Office of Education clearly points out that agencies are not allowed to appoint surrogates when parents are uncooperative or nonresponsive.

Surrogates are to be selected in any way permitted under state law.

Requirement of special notice:

Checklist

__Required
- if parent requests
- if hearing initiated

Activities of Hearing Officer:

See if requirements of special notice have been met.

The following instance of special notice is required:

The public agency shall inform the parent of any free or low-cost legal and other relevant services available in the area if:

(a) the parent so requests, or

(b) the parent or the agency initiates a hearing under this section.

Note: Although parent groups such as the National Association for Retarded Citizens and the Association for Children with Learning Disabilities are not generally thought of as legal services, they often provide legal service or referrals and therefore in such cases may be considered a "relevant service."

Requests for Further Information

Checklist

__From parties
__Independent educational evaluation

Activities of Hearing Officer:

a. May request further information from the parent or the public agency in writing, with a copy to the other party.

b. May request, in accordance with 121a.503, an independent educational evaluation at public expense.

Note: In doing so, and in accord with 121a.512, the Hearing Officer may grant specific time extensions of the 45-day requirement for timeliness.

Prehearing Contacts

Checklist

__Parent phone contact
- prior notice
- legal services
- independent educational evaluation
- access to records
- open/closed
- child's attendance
- time and place

__Public agency phone contact
- confirm due process
- procedure
  - evidence
  - witnesses
  - facilities
  - date and time

__Letter to parents
- due process
- written evidence
- list of witnesses
- interpret/open-closed
- date-time
- hearing officer phone number

__Letter to public agency
- written evidence
- interpret/open-closed
- date-time
- hearing officer phone number

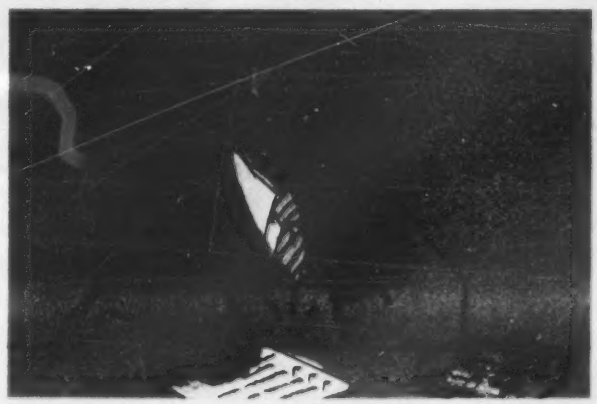
__Full disclosure
- material to petitioner
- material to respondent

Activities of Hearing Officer:

a. Parent phone contact (see sample) to determine:

(1) if all aspects of prior notice have been understood,

(2) if information regarding free or low-cost legal services has been provided,



(3) if information regarding sources of independent educational evaluations has been requested and provided,
(4) if access to records has been provided,
(5) if the hearing is to be open,
(6) if the child is to attend,
(7) if there are constraints as to time and place of meeeting.

b. Agency phone contact (see sample) to confirm:
(1) due process requirements,
(2) procedure:
(a) evidence to present,
(b) witnesses to call,
(c) facilities to use for the hearing,
(d) date and time for hearing.
(cross check with dates and time for parents)

c. Letter to parents (followup)
This letter (see sample) summarizes:
(1) due process fulfillment,
(2) submittal of written evidence,
(3) list of witnesses,
(4) use of interpreter or translator and whether hearing is to be open or closed,
(5) decision on hearing date, time, and location,
(6) where to reach Hearing Officer for any questions.

d. Letter to public agency (followup)
This letter (see sample) summarizes;
(1) submittal of written evidence and list of witnesses,
(2) use of interpreter or translator and whether hearing will be open or closed,
(3) decision on hearing date, time, and location,
(4) where to reach Hearing Officer for any questions.

e. Full disclosure
(1) Hearing Officer sends petitioner's evidence and list of witnesses to respondent within time limit,
(2) Hearing Officer sends respondent's evidence and list of the witnesses to petitioner within time limit.

Notification of Hearing

Checklist

__Petitioner
__Respondent
__Witnesses
__Compelling witnesses

Activities of Hearing Officer:

Notification of hearing date, time, and location and agenda of the hearing is sent to each participant in order to insure notification.

Compelling witnesses: The procedure for compelling witnesses is governed by state regulations. The Hearing Officer may find it helpful to check with the local District Attorney in order to determine the procedure to follow.

NOTE: If witnesses to be compelled are at some distance or are in any way indisposed, or if the Hearing Officer finds it not possible to compel a witness to attend legally, two procedures are possible: 1) depositions, or 2) interrogatories. Basically, both of these procedures are a way of obtaining valid testimony, sworn to before a notary public, from witnesses who cannot be physically present at a hearing. Consultation with the District Attorney can help determine local policy applicable to these procedures.

Procedural Arrangements

Checklist

__Recording of hearing
recording
transcription
__Interpreter
__Translator
__Master list
evidence
witnesses

Activities of Hearing Officer:

a. Arrange for recording of hearing:
(1) tape recording,
(2) transcription;
b. Arrange for interpreter, if required;
c. Arrange for translator, if required;
d. Prepare master list of:
(1) information to be submitted as evidence,
(2) witnesses.

(Note: Text continues on page 30)

Hearing Officer's Telephone Contact: Prehearing Information (to parent)

Child's name: _____

Parent's name: _____

Phone number: _____

School District: _____

School Representative: _____

Phone number: _____

Date: _____

Spoke with: _____

The purpose of this contact is two-fold:

1) to determine if public agency has complied with due process requirements and 2) to elicit information required for the hearing. You MUST NOT discuss any information pertaining to the case.

This is _____. I have been appointed as Hearing
(name)

Officer in the matter concerning _____.
(name of child)

I am calling for two reasons. First, I would like to determine if you have been fully informed of your rights. *(Use Due Process Checklist on next page).* Second, I would like to ask a few questions in order to obtain the information I need to make the arrangements for the hearing. Do you have a few minutes now to answer my questions?

(If not, establish another time to call.)

Procedural questions

a) What written evidence do you plan to introduce?
b) What witnesses do you plant to have testify?
c) Do you plan to have or have you had an independent educational evaluation?

Remind the parents that any evidence they plan to introduce must be disclosed at least five days prior to the hearing.

d) Is English the primary language used in the house?
e) Do you wish to have the hearing open or closed?
f) What would be the most convenient date and time for the hearing?
Alternative date and time?
g) Does the _____ create any problems for you as a location for the hearing?
(Location)

I will send you a letter today which will summarize our discussion with a copy to the public agency. Thank you for your cooperation.

Due process checklist (for use in telephone contact with parent)

(Note Yes, No, or Not Applicable following each question)	Yes	No	N/A	Comments
A) Consent				
B) Prior notice				
1) content of notice				
a) explanation				
(1) records				
(2) independent educational evaluation				
(3) prior notice				
(4) consent				
(5) impartial hearing				
(6) hearing officer				
(7) hearing rights				
(a) counsel expert				
(b) evidence				
(c) disclosure				
(d) record				
(e) decision				
(f) child—open				
(8) administrative appeal				
(9) civil action				
(10) timeliness/convenient				
(11) child's status				
(12) surrogate parent				
b) description of: (1) action				
(2) explanation				
(3) options				
c) evaluation				
d) other relevant information				
e) notice				
(1) understandable language				
(2) native language				
f) if language not written				
(1) translated				
(2) understood				
g) required information (1) have you received information regarding free or low-cost legal service?				
(2) have you received information regarding sources of independent educational evaluations?				

Hearing Officer's Telephone Contact: Prehearing Information (to Public Agency)

Child's name: _____

Parent's name: _____

Phone number: _____

School District: _____

School Representative: _____

Phone number: _____

Date: _____

Spoke with: _____

The purpose of this contact is two-fold: 1) to inform the public agency that the due process requirements have or have not been fulfilled, and 2) to elicit information required for the hearing. You MUST NOT discuss any information pertaining to the case.

This is _____ (name). I have been appointed as Hearing Officer in the matter concerning _____ (name of child).

I am calling for two reasons. First, I want to confirm that I am satisfied that you have fulfilled your due process requirements in this matter. Second, I would like to ask a few questions in order to obtain the information I need to make the arrangements for the hearing. Do you have a few minutes to anwer my questions?

(If not, establish another time to call)

Procedural questions

a) What written evidence do you plan to introduce?
b) What witnesses do you plan to have testify?

Remind the agency that any evidence to be introduced must be disclosed at least five days prior to the hearing.

c) Do you have a conference room large enough for the hearing that can be used for such a purpose? (Adjust for number of expected participants.)
   If not, do you have any recommendations for a location for the hearing?
d) What would be the most convenient date and time for the hearing?

Cross check with dates and time obtained from the parents.

I will send you a letter today which will summarize our discussion, with a copy of it to the parents. Thank you for your cooperation.

Information on Witnesses **Re:** _____
(Name of child)

Please complete the following information so that notice may be provided to the witnesses relating to the time and place of the hearing.

1. Voluntary witnesses:

   NAME POSITION ADDRESS

   a) _____
   b) _____
   c) _____
   d) _____
   e) _____

2. Witnesses to be compelled: (Note: In accord with Section 121a.508, any party to a hearing has the right to compel the attendance of witnesses. This section should be used to list the name of witnesses who are not attending on a voluntary basis.)

   NAME POSITION ADDRESS

   a) _____
   Reason for requiring attendance: _____
   b) _____
   Reason for requiring attendance: _____

3. Sequestering of witnesses: On occasion, it is necessary to sequester (remove or segregate) witnesses. One reason for sequestering is due to the presentation of confidential information or information that a party to the hearing prefers not to become general knowledge. If you wish all witnesses to be sequestered during the hearing, please indicate your reason below. Please be advised that this is a decision left to the Hearing Officer and is not a right automatically granted to either party. Nevertheless, the information provided below will be taken into consideration in this decision.

☐ I do not request the sequestering of witnesses.

☐ I request the sequestering of witnesses for the following reasons:

_____
_____
_____
_____

Sample Follow-up Letter: Prehearing Information (to parent)

Dear _____:

This letter will serve to summarize our phone conversation of (date) regarding the arrangements for the hearing on the matter of (student's name). As I stated at the beginning of our conversation, the purpose of our discussion was two-fold: 1) to determine if the (public agency) has fully complied with the due process requirements, and 2) to obtain information necessary to plan for the hearing.

After discussing the due process provisions on a point-by-point basis, I am satisfied that the school district has adequately informed you of your rights. In addition, we discussed the introduction of written evidence, the presentation of witnesses, and your plans for an independent educational evaluation.

Let me remind you again that any written information you plan to introduce must be forwarded to me in time for full disclosure to the public agency within the mandatory five-day time limit. Also, please complete the attached form listing the witnesses you intend to present.

In addition, we agreed that, since English is the primary language of the home, there will be no need for an interpreter or translator. Also, as we agreed, the hearing will be (open/closed).

Finally, we agreed to hold the hearing at (location) on (date) (time). The school district has agreed to this time and place. I will send a formal notice to you and your witnesses regarding the time and place of the hearing as soon as I receive your list of witnesses.

Thank you for your cooperation. If you need to contact me in reference to the proceedings, you may do so at (phone no.) from (hours) to _____ on any weekday. Once again, I will not be able to discuss the facts of this case with you, only the procedural matters relating to the arrangements for the hearing.

Sincerely,

_____

Sample Follow-up Letter: Prehearing Information (to school district)

This letter will serve to summarize our phone conversation of (date) regarding the arrangements for the hearing on the matter of (student's name). As I stated during our conversation, the purpose of our discussion was to obtain information necessary for the hearing, and to verify compliance with procedural safeguards.

We discussed the introduction of written evidence and the presentation of witnesses and agreed that written evidence and the attached list of witnesses must be forwarded to me in time for full disclosure to the parents within the mandatory five-day time limit.

In addition, we agreed that, since English is the primary language of the home, there will be no need for an interpreter or translator. Also, the parents request that the hearing be (open/closed).

Finally, we agreed to hold the hearing at (location) on (date) (time).

The parents have also agreed to this time and place. I will send a formal notice to you and your witnesses regarding the time and place of the hearing as soon as I receive your list of witnesses.

Thank you for your cooperation. If you need to contact me in reference to the proceedings, you may do so at (phone no.) from (hours) to _____ on any weekday. Once again, I will not be able to discuss the facts of this case with you, only the procedural matters relating to the arrangements for the hearing.

Sincerely,

_____

Agenda

Checklist

__Timing and mailing
__Format of agenda

Activities of Hearing Officer:

a. Prepare an agenda for the hearing, providing an overview of the scheduled proceedings, in time to be mailed in advance to the parties and witnesses with the final notification of hearing date.

b. The following format is suggested for the agenda:

Sample Agenda

7:00 p.m. Wednesday, October 21, 1977

Conference Room of Logan School
1143 S. Mayfield
Peyson, Arizona

I. Formal Call to Order

II. Introductory Statement by Hearing Officer
  A. Statement of open or closed hearing
  B. Introduction of Hearing Officer
  C. Introduction of participants for record
  D. Purpose of the hearing

III. Opening of Formal Testimony
  A. Format
  B. Opening statement
    1. Petitioner
    2. Respondent
  C. Presentation of written evidence and testimony
    1. Written evidence
      a) Petitioner
      b) Respondent
    2. Testimony of witnesses
      a) Petitioner
      b) Respondent

IV. Summary statements
  A. Petitioner
  B. Respondent

V. Closing statements by Hearing Officer
  A. Decision date
  B. Availability of verbatim record of hearing
  C. Procedures for appeal

SELF-TEST QUESTIONS

Preparing for the Hearing
(Answers on page 50)

Mark True (T) or False (F) the following statements concerning whether parents have the right to:

1. _____ receive prior written notice in language understandable to them regarding identification, evaluation or placement of their child.
2. _____ obtain an independent evaluation of their child
3. _____ have their child evaluated independently at public expense
4. _____ request information on qualified examiners from public agency
5. _____ have the hearing reviewed by the SEA no later than 3 months from the time a request for review has been made
6. _____ refuse to have their child identified, evaluated or placed even if state law does not require their consent
7. _____ respond to but cannot initiate a hearing
8. _____ a description of each test, evaluation or report used as basis for public agency's action(s)
9. _____ be advised by counsel at public expense
10. _____ present evidence, confront, cross-examine and compel attendance of witnesses during a due process hearing
11. _____ introduce evidence up to time of hearing
12. _____ choose location of hearing
13. _____ disagree to verbatim record of hearing
14. _____ have the child present during a hearing
15. _____ open the hearing to the public
16. _____ be represented by surrogates when they (the parents) choose not to respond
17. _____ appeal to the courts if dissatisfied with outcome of hearing
18. _____ choose to have their child remain in present educational placement pending the hearing decision
19. _____ have the hearing procedures completed within 45 days of initial request

Circle correct response:

Which of the following procedures need to be insured when evaluating a handicapped child?

A. Tests and evaluative materials must be valid and administered by appropriate examiners in the child's native language.
B. Any comprehensive, standardized achievement test which yields an IQ score may be used as the sole evaluation measure.
C. Child must be assessed in all areas related to the suspected disability.
D. Evaluation may be made by a teacher or specialist.
E. All of the above
F. A and C above
G. A, C and D above

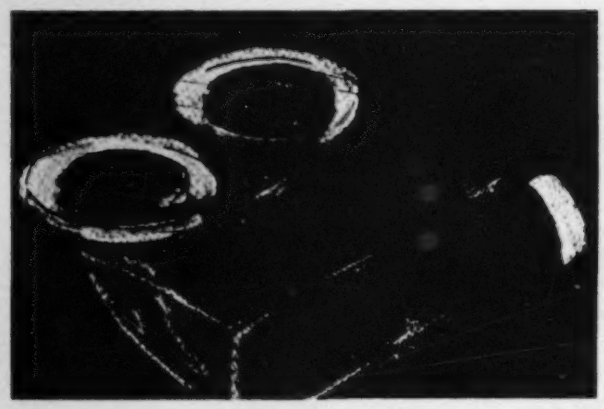
VI. CONDUCTING THE HEARING

This chapter covers the following aspects of conducting a hearing:

- **Call to order**
- **Introductory statement by Hearing Officer**
- **Opening of formal testimony**
- **Summary statements**
- **Closing statements**

The purpose of the hearing is to provide an open, orderly forum for both parties to present their views, question witnesses, and discuss the evidence. It is the responsibility of the Hearing Officer to insure that the proceedings serve such a purpose.

Call to order



The Hearing Officer should call the proceedings to order at the appointed time. At this time, the Hearing Officer should begin the recording of the hearing.

Introductory Statement by Hearing Officer

Checklist

__Open/closed hearing
__Introduction of participants
__Statement of purpose
__Swearing in witnesses
__Procedural matters

Activities of Hearing Officer:

a) The Hearing Officer states whether the hearing is open or closed and, if closed, asks all individuals not a party to the proceedings to leave.

b) The Hearing Officer introduces himself or herself and asks each participant to state his or her name and position for the record.

c) The Hearing Officer briefly summarizes the purpose of the hearing, concisely setting out the issue.

d) Witnesses should be sworn in to lend a tone of seriousness to the proceeding. There is, however, no reason to overemphasize this procedure. The witnesses should be sworn in as a group, and for that purpose the following phrase should suffice:

"Do you affirm that your statements will be accurate to the best of your knowledge?"

e) In a large or extremely controversial hearing, there may be good reason to sequester (remove or segregate) witnesses. Therefore, the Hearing Officer asks at this time if there is any reason to remove the witnesses. If so, the Hearing Officer should ask all witnesses to leave the room and wait until they are called.

In such a case, the witnesses should be provided a comfortable area adjacent to the hearing room, and a representative of the public agency or the site used for the hearing should be requested to act as a gatekeeper to summon the witnesses as needed.

In a small or more informal hearing, there is no reason to sequester witnesses. On occasion, for reasons of confidentiality, a parent may wish that the witnesses not be present. If so, witnesses should be sequestered in order to protect confidentiality. Nevertheless, this is a consideration which must be arranged in advance of the hearing, in order to insure that a satisfactory room can be provided and that an individual is available to bring witnesses back and forth as needed.

Note: If a hearing is closed, it is closed to the general public. The parents may have specified friends and relatives in attendance.

f) Procedural Matters—The Hearing Officer may explain that no smoking or eating will be allowed, and may give the time schedule for adjournments and recesses. The Hearing Officer should plan to call for a short 10-minute recess about once every hour.

If a tape recorder is used, it should be within view of the Hearing Officer in order to determine easily when tapes need to be changed. The Hearing Officer should stop the proceedings when it is necessary to change tapes or to accommodate the stenographer's needs in any other way.

Opening of Formal Testimony

Checklist

__Format outline
__Opening statements
__Presentation of evidence
  written evidence
  witnesses
    examination
    cross-examination
    re-examination
    Hearing Officer examination
__Questioning witnesses
  party or counsel
  counsel for witness
  necessary interruptions
__Special consideration
  due process
  failure to appear
    party
    witness
  postponement request

Activities of Hearing Officer:

Format

At this time, the Hearing Officer briefly outlines the format to be followed, the procedure to be used to present evidence and testimony, and the responsibility of the Hearing Officer to elicit further information, as necessary. It may be wise to request that all statements made during hearing be addressed to the Hearing Officer. This will serve to discourage discussion between the participants. (An obvious exception would be discussions between parties and their own counsel or expert.)

Format outline:

1. Opening statements,
2. Presentation of written evidence
3. Presentation of testimony by witnesses, petitioner followed by respondent:
   (a) introduction
   (b) examination
   (c) cross-examination
   (d) re-examination
   (e) questions from Hearing Officer
4. Summary statements
5. Closing statements

Opening Statements

The Hearing Officer reminds the parties that opening statements will not be considered as evidence and, therefore, will not enter into the decision.

Note: This statement serves two purposes:

(1) It serves to differentiate between information upon which a decision is based and statements which will not be considered during the decision-making, and

(2) It allows the parties to begin their statements on a more informal, less stressful basis.

The Hearing Officer asks for opening statements from each party to summarize the issues as each sees it.

(a) Petitioner,
(b) Respondent.

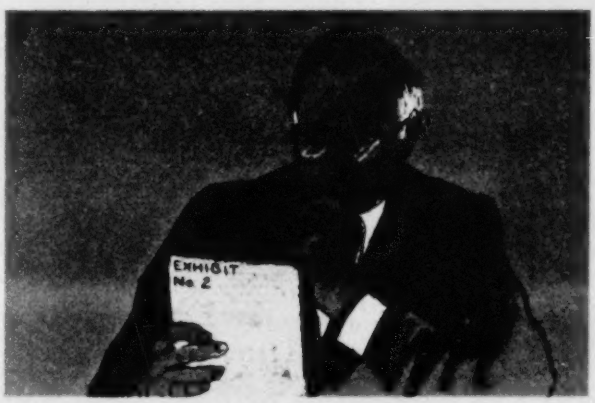
Note: The designation of the order of presentations is arbitrary. Some feel that since the public agency must make its case for or against an issue and has the burden of proof, the public agency should present first.

Presentation of Evidence and Testimony

Written evidence:

a) Petitioner presents official reports to be entered as evidence and a list of witnesses in the order they are to be called for testimony;

b) Hearing Officer checks evidence and witnesses against list for full disclosure;



c) Respondent presents written material to be entered as evidence and a list of witnesses in the order they are to be called for testimony;

d) Hearing Officer checks evidence and witnesses against list for full disclosure.

e) Labeling evidence. Each piece of evidence should be given an identifying number or letter for ease of reference. This allows the parties to describe the evidence by the shorthand label rather than by a description and reduces confusion and mi understanding.

Testimony by witnesses:

a) The party originating the hearing (petitioner) should present witnesses first.

b) As each witness is summoned, the Hearing Officer indicates where the witness is to sit (close to recorder or reporter), and requests that the witness states:

(1) name,
(2) address,
(3) position,
(4) relationship to child,
(5) reason for appearance.

c) The Hearing Officer requests the petitioner to proceed with the eliciting of testimony from the witness.

d) At the completion of petitioner questioning, the Hearing Officer asks if the respondent wishes to question ("cross-examine") the witness.

e) If the respondent does question the witness, the petitioner must be asked if he has further questions for the witness (this re-examination may be done to clarify any information brought out in the cross-examination).

f) Following the re-examination, the Hearing Officer may ask the witness any questions he or she feels are necessary.

g) The Hearing Officer asks if there will be further need of the witness. If so, the witness is asked to remain to be called at a later time. Otherwise, the Hearing Officer thanks the witness for the testimony and dismisses the witness.

Questioning Witnesses

a) Only the party, or the party's counsel, or the Hearing Officer may question witnesses.

b) Counsel appearing at the hearing to represent a witness may only advise his or her client and may not question witnesses.

c) At any time, the Hearing Officer may interrupt the proceedings to stop unnecessarily hostile or irrelevant pursuits in the questioning.

d) At his or her discretion, the Hearing Officer may determine if questions or statements from others at the hearing should be permitted.

Special Considerations

Due process:

If the Hearing Officer has not previously determined that due process requirements have been met, the first order of business should be to do so.

(Refer to parent phone contact forms)

If the Hearing Officer determines that a failure on behalf of the public agency to meet its due process obligations will substantially affect the current proceedings, a postponement of the hearing may be necessary.

Failure to appear:

a) Parent or public agency representative—If one of the principal parties to the hearing fails to appear, the Hearing Officer may wish to adjourn the hearing to another date. However, the Hearing Officer may proceed with the hearing, noting for the record that adequate notice was provided. Any decision from such a hearing must be based solely on the evidence presented. A decision to continue or adjourn should be determined on the circumstances of each case or state law, if applicable.

b) Witness—If a witness for either party fails to attend, the hearing should proceed with a notation for the record that the evidence from the missing witness will be taken at a later date. The Hearing Officer may then reconvene the hearing for testimony by the missing witness.

If information provided by a witness who fails to show at the hearing is particularly relevant, the Hearing Officer may ask the other party if they wish to stipulate to or accept the material. For example, if a psychological report is available and the psychologist fails to appear, the parties can agree to stipulate to the information as fact.

Requests for postponement:

This will usually be a judgment call. The Hearing Officer should ask for a statement of the reasons for the request for a postponement and must then decide on the merits of the request. Taking into consideration the purpose for such a hearing, it is generally advantageous to have both parties feel that they are adequately prepared.

Summary Statements

Checklist

__Petitioner
__Respondent

Activities of Hearing Officer:

a) Hearing Officer asks for a summary of the petitioner's position.

b) Hearing Officer asks for a summary of the respondent's position.

Note: Once again, this information is not evidence and should not be considered in the decision.

Closing Statement by Hearing Officer

Checklist

__Decision
__Record of hearing
__Right to appeal

Activities of Hearing Officer:

a) Hearing Officer indicates that a decision will be mailed to each party within (number) of days. Technically, a decision must be mailed within 45 days of the initial appeal request, unless the Hearing Officer has extended the time limit. Also, some states have time limits from the date of the hearing.

b) Hearing Officer indicates that the verbatim record of the hearing will be available within _____ of days and may be obtained
(number)
_____. (State law or
(location of transcript)
regulation will most likely set this policy.)

c) Procedures for appeal—The Hearing Officer should indicate the right to appeal the hearing decision, the procedure to follow, and the time limit prevailing according to state regulations.

SELF-TEST QUESTIONS

Conducting the Hearing

(Answers on page 50)

Mark the following statements True (T) or False (F) concerning the responsibilities of an Impartial Hearing Officer:

1. _____ Enact the principles of equal treatment and due process.
2. _____ Remain impartial and independent while conducting an unbiased examination of the information presented during the hearing.
3. _____ With the exception of retaining counsel, the hearing must be at no cost to the parents.
4. _____ Establish that written notice was given to the parents regarding the identification, placement, evaluation, or free appropriate public education of the child.
5. _____ Insure that the child was placed prior to receiving a full evaluation.
6. _____ Insure that the placement decision be in the least restrictive environment.
7. _____ Determine whether an IEP was developed prior to placement.
8. _____ Completely examine the public agency's compliance with due process procedures prior to the hearing.
9. _____ Insure that any party may present evidence, confront, cross examine, and compel witnesses.
10. _____ Maintain the public agency's right to have the child present.
11. _____ Establish that the child is handicapped according to federal requirements and regulations.
12. _____ Arrange for facility in which to hold the hearing.
13. _____ Determine unilaterally whether the hearing be open to the public.
14. _____ Insure that no single procedure or instrument was used as the sole criterion in determining an educational program.
15. _____ Unless the IEP requires otherwise, insure that the child is educated in the school which he or she would attend if not handicapped.
16. _____ Determine whether parents have access rights to records.
17. _____ Insure that mediation was not used to deny or delay parent's rights.
18. _____ When parents are uncooperative, select surrogate parents as outlined by federal law.
19. _____ Make initial telephone contact with both public agency and parents and follow up with summarization letter requesting list of witnesses.
20. _____ Establish the agenda for the hearing.

Answer the following statements with YES or NO:

21. _____ Sequestering of witnesses is not allowed.
22. _____ Identify each piece of evidence by number of letter.
23. _____ Only the party, counsel or the Hearing Officer may question witnesses.
24. _____ Counsel representing a witness may cross examine other party's witnesses.

SELF-TEST QUESTIONS

(Continued)

25. _____ The hearing officer may grant time extensions at the request of either party.
26. _____ According to PL 94-142 regulations, a hearing must be preceded by a mediation conference.
27. _____ Each hearing should be limited to no more than three hours.
28. _____ The verbatim record of the hearing may be a recording or a written transcript.
29. _____ The hearing officer may determine that the child in question may not attend the hearing even when attendance is requested by the parents.
30. _____ Parents may cross-examine witnesses.
31. _____ The child in question remains in his/her current placement pending the outcome of the hearing, provided the hearing officer determines such an action will not be detrimental to the child or others.
32. _____ Regulations require that the public agency present its case first, followed by the parents.
33. _____ Witnesses should be asked to address their testimony to the hearing officer.
34. _____ If a witness fails to appear at the hearing, the hearing must be postponed.

VII. THE DECISION

This chapter covers the following aspects of the decision process:

- **Constraints on the decision**
- **Preparation of the decision**
  - **Format**
  - **Submittal**
- **Administrative Review and Civil Action**

The purpose of the decision is to summarize the pertinent evidence presented at the hearing and to make a logical conclusion based on that evidence to decide the issue. Extraneous points should be avoided.

It is important to keep in mind the basic purpose for which the seemingly complex mass of Federal and state regulations were initially generated:

1) To insure that all handicapped children have available to them a free appropriate public education that includes special education and related services to meet their unique needs,

2) To insure that the rights of handicapped children and their parents are protected,

3) To assist states and localities to provide for the education of all handicapped children, and

4) To assess and insure the effectiveness of efforts to educate those children.

CONSTRAINTS

The Hearing Officer has wide latitude in his or her authority, but there are certain constraints. There are three primary limitations in the decision-making process: 1) *the issue,* 2) *the evidence,* 3) *public agency prerogative.*

1. **The issue.** The Hearing Officer is limited to deciding the presenting complaint and should not go beyond that issue in the decision.

For example, if the parent's point is that the agency used improper methods in evaluating the child and, therefore, the placement recommendation is invalid, the Hearing Officer should limit the decision to the issue of the evaluation procedure. The Hearing Officer should not attempt to correct the difficulty by determining a proper category for the child's disability or recommending another program. The issue is the appropriateness of the evaluation procedure, and it is to that issue that the decision must be addressed.

2. **The evidence.** The Hearing Officer must limit his or her decision-making to the evidence presented at the hearing. The decision cannot be based upon material that was not introduced, hearsay, or personal assumptions.

For example, if the Hearing Officer feels that the child in question has the same behavioral pattern as a child he or she has worked with in the past, but the evidence submitted is contrary, the evidence must prevail.

3. **Public agency prerogative.** The Hearing Officer must limit his or her decision to the type of placement in generic terms; the decision cannot require placement in a specific classroom.

For example, if the Hearing Officer feels that the evidence demands a placement in a learning disability classroom, the decision cannot require the placement to be in a specific teacher's classroom based upon the Hearing Officer's knowledge that the specific teacher is a particularly good one. The specific assignment to a classroom or teacher is a public agency prerogative.

PREPARATION OF THE DECISION

Format of the Decision

Checklist

__Rationale
__Personally identifiable information
__Suggested format

Activities of Hearing Officer:

a) Rationale for format. A separate face-page for the identifying information is called for because of the Federal requirements (Section 121a.508) that the public agency shall transmit those findings and decisions, after deleting any personally identifiable

information, to the State advisory panel established under subpart F.

b) "Personally identifiable" information refers to:

(1) The name of the child, the child's parents, or other family member(s),

(2) The address of the child,

(3) A personal identifier, such as the child's social security number or student number, or

(4) A list of personal characteristics or other information which would make it possible to identify the child with reasonable certainty. (Section 121a.500)

If the Hearing Officer places the personally identifiable information on a face-page, and refers to the parties as petitioner and respondent, the decision could be forwarded to the State Advisory panel

simply by removing the face-page rather than the laborious process of deleting personally identifiable information throughout the report.

Suggested Format

I. Personally identifiable information
(Place on a separate face-page)

II. Issue and purpose of the hearing
(Refer to individual who initiated the hearing as the petitioner and the responding party as the respondent)

III. Findings of fact
(Summary of relevant evidence presented by petitioner and that presented by respondent)

IV. Decision and rationale
(The ruling of Hearing Officer on the issue and the reasoning behind the decision)

V. Procedure to follow for appeal
(A detailing of the procedure for either party to follow in order to seek an administrative review)

Preparation and Submittal

Checklist

__Preparation
face-page
body of report
__Submittal timeline
__Conveyance method
__Conveyed to:
parent
public agency
record

Activities of Hearing Officer:

Preparation—The report should be prepared in two parts: (See sample decision in Appendix A.)

(1) Face-page: personally identifiable information:

a) child's name,

b) parent's name,

c) address,

d) identifying information such as student number and social security number.

(2) Body of report: findings of fact, decision and rationale, and appeal procedures.

Submittal timeline—The submittal timeline is governed by the 45-day time limit on the overall proceedings, unless extended by the Hearing Officer.

Conveyance of the decision—The report should be typed and at least four copies prepared. Copies should be sent *Certified Mail, Return Receipt Re-*

quested, to the following:

(1) The parent—one copy,

(2) The public agency—two copies (one to be forwarded to the State advisory panel),

(3) The Hearing Officer should retain the original (to make further copies if necessary) and one copy for his or her files.

ADMINISTRATIVE REVIEW AND CIVIL ACTION

Administrative Review

Right to appeal—If the hearing is conducted by a party other than the State Education Agency (SEA), either aggrieved party may appeal the findings and decision in the hearing to the SEA.

Conduct of the administrative review—The official conducting the review shall:

a. examine the entire hearing record,

b. insure due process requirements,

c. seek additional evidence, if necessary. If another hearing is conducted, the rights in 121a.508 apply (hearing rights).

d. at the reviewing officer's discretion, request additional oral or written argument,

e. make an independent decision,

f. give a written copy of the findings and decision to the parties.

Such a decision by the reviewing official is final unless a party brings civil action.

Civil Action

Any aggrieved party who does not have a right to an administrative review after a hearing, or any party aggrieved by the decision of the SEA reviewing officer, has the right to bring a civil action in court.

Comment: The Office of Education notes that several commenters requested a statement to allow a direct appeal to civil action prior to the hearing and review procedures. The Office of Education points out that the issue of exhaustion of remedies will be up to the courts to resolve.

SELF-TEST QUESTIONS

The Decision

(Answers on page 50)

Mark the following statements True(T) or False (F):

1. _____ The Hearing Officer's decision must be limited to the issue and must be based only on evidence presented at the hearing.

2. _____ The Hearing Officer may determine which teacher among several qualified teachers will be assigned to the child.

3. _____ The final written decision must be rendered within 45 days of the public agency's receipt of the request for a hearing.

4. _____ Either party to a hearing may appeal the decision to the state or to the courts.

5. _____ Only the public agency may receive a copy of the hearing officer's written decision.

6. _____ The decision should be sent by certified mail, return receipt requested.

7. _____ Opening statements should be considered when rendering the decision.

8. _____ The decision should include summarizations of all testimony provided by each party.

9. _____ If the decision is rendered orally to both parties by the Hearing Officer, a written decision is not necessary.

Appendix A

SAMPLE HEARING DECISION

A sample hearing decision is reprinted on the next five pages as an aid in decision writing for Hearing Officers.

The sequence below is suggested as a logical order for use in reporting the decision:

- Cover page
- Issue and purpose of the hearing
- List of documents entered as evidence
- List of witnesses
- Clarification of the issue
- Findings of fact
- Decision and rationale

Sample Cover Page

HEARING DECISION

Child's name: Robert _____

Parent's name: Mr. and Mrs. _____

Address:

Local School District: _____

Address: _____

Representative: _____

Hearing Date: _____

Date of Report: _____

Hearing Officer: _____

Issue and Purpose of the Hearing

In this issue the petitioner, the parents of the child in question, is seeking placement in a private school and are requesting that the respondent, the public school, grant a tuition award for this placement.

The following documents were entered as evidence:

1.	Notice of Proposed change in Educational Placement	(R#1)
	Letter from M.D.	(R#2)
	The Learning Center	(R#3)
	Psychological Report - Public School	(R#4)
	Request for Hearing	(P#1)
	Academic Report - Private School	(P#2)
	Psychoeducational Assessment - Private School	(P#3)
	Psychological Evaluation - Private School	(P#4)

During the course of the hearing, the following witnesses appeared:

1. Director of Special Education
2. School Psychologist
3. Special Education Teacher
4. Mother of Child
5. Father of Child

The school system was represented by an attorney and the parents elected to represent themselves.

The issue in this hearing has to do with the adequacy of an educational placement for this child. The parents contend that the child will regress if returned to the public school and that he should remain in the private school where he is content and making academic progress. The school system contends that the child should be returned to public school and placed in the Learning Center which is an adequate placement for the child's special needs.

Prior to the hearing, a determination was made by the Hearing Officer that the school system had complied with all aspects of the required procedural safeguards. In addition, the full disclosure requirement was met by the exchange of written evidence and lists of witnesses at least five days prior to the hearing.

Findings of fact

1) The petitioners contend that the child should remain at the Private School due to the excellent progress being made under the Private School's direction. The father cited the Private School psychologist's report of 11/9/76 which pointed out the child's difficulty in dealing with visual "noise" and presented the recommendation that the child remain at the Private School. The father objected to the placement suggested by the Public School on the basis that the Learning Center was for children two to four years below grade and that his child would regress for the third time if returned to the Public School.

2) The mother essentially reiterated the father's position on the benefits of the Private School placement. She contended that she had never met the Learning Center teacher and that no one at the hearing had actually met her child. She also stated her concern for the emotional impact of such a change and her fear that her son would regress academically if returned to Public School.

3) The Director of Special Education contends that the child is in need of the following educational interventions:

1. small group instruction to remove distractions
2. auditory instruction
3. self-pacing
4. abstract reasoning
5. directionality
6. speech therapy

The Director further contends that the Learning Center can meet these needs through the following provisions:

1. reduction in distraction
2. auditory instruction
3. individualized instruction
4. psycho-motor activities in physical education
5. abstract reasoning and problem-solving
6. speech therapy

Therefore, the Director recommends that a placement in the Learning Center is adequate for the child's needs.

4) The School Psychologist testified that from his interpretation of the child's educational and medical records, the child was in need of the following:

1. small group instruction to remove distractions
2. auditory instruction
3. self-paced instruction rather than a group schedule

5) The Special Education Teacher at the LearningCenter contends that the child needs instruction in abstract reasoning and directionality. She presented an integrated program consisting of four periods in regular classes and three periods in the Learning Center where the following individualized program would be implemented:

1. reduction in distractions by small group placement
2. auditory instruction
3. individual tasks
4. psycho-motor activities in physical education
5. abstract reasoning - problem solving
6. speech therapy

The Special Education Teacher indicated that, in her professional judgment, the Learning Center was an appropriate placement.

6) The attorney for the public school pointed out in the cross-examination of the parents that the child is currently one year behind academically, is in good physical health, and is in emotional good health. This appears to be substantiated by the evidence from the physician and the academic reports.

Decision and Rationale

The evidence and testimoney presented indicates that the Public School Learning Center is an adequate educational placement for this child. The school system has submitted persuasive evidence that the facilities and educational provisions of the Learning Center will meet the educational needs of this child. The record indicates that the child needs:

1. small group instruction
2. auditory instruction
3. self-paced learning activities
4. work in abstract reasoning, problem solving, and directionality
5. speech therapy

The testimony of the Director of Special Education and the Special Education teacher have established that the Learning Center can meet each of these requirements. In addition, the Learning Center will provide an integrated program within the regular classroom structure.

The facts appear to be that not all children in the Learning Center are two to four years behind academically and that some students are learning disabled and that at least two are at grade level. Although the Public School appears to have made its recommendation from an interpretation of the child's records rather than a direct assessment, the Private School's evaluation materials appear to substantiate the Public School's interpretation of instructional need.

In addition, the child in question seems to be emotionally healthy and should not be adversely affected by a return to the Public School if the appropriate supports are provided. I would urge both parties in this matter to concentrate their efforts toward working on an appropriate plan for the transition to the Learning Center, including short visits by both the parents and the child.

Therefore, on the basis of the information presented above, the child should be placed in the Public School Learning Center to follow the educational plan outlined by the Public School.

The petitioner has the right to appeal this decision by requesting an administrative review. In order to do so, the petitioner must file a written request with the State Department of Education, Administrative Review Department, 112 South Street, within ten days from the date of this decision.

_____

Hearing Officer

Appendix B

MASTER CHECKLIST

Preparing for the Hearing

_____**Initial public agency contact (Page 17)**
- ____Request materials for review
- ____Obtain public agency policy
- ____Determine procedures
- ____Determine meeting facilities

_____**Inspection of public agency information (Page 18)**
- ____Policy
- ____Parent release
- ____Consent for evaluation
- ____Prior notice
- ____Educational reports
- ____Cumulative record reports
- ____Social service reports
- ____IEP (Individualized Education Plan)
- ____Informal mediation conference

_____**Examination of public agency**

_____**Consent requirement (Page 18)**
- ____preplacement evaluation
- ____initial placement

_____**Prior notice requirement (Page 18)**
- ____content of notice
- ____full explanation
  - ____examine records
  - ____independent educational evaluation
  - ____prior notice
  - ____parental consent
  - ____impartial hearing
  - ____impartial Hearing Officer
  - ____hearing rights
    - ____counsel
    - ____evidence
    - ____prohibit evidence
    - ____verbatim recording
    - ____findings of fact, decision
    - ____child present
    - ____open hearing
  - ____administrative appeal
  - ____civil action
  - ____timeliness
  - ____child's status
  - ____surrogate parent

Description of:
____action
____explanation
____options
____evaluation procedures
____other relevant factors
Notice must be:
____understandable
____in native language
Mode of communication:
____translated
____understandable
____written evidence

_____**Appropriate evaluation (Page 19)**
Tests are:
____in child's language
____validated
____properly administered
____Include specific tests
____Do not measure impairments
____No single procedure
____Multidisciplinary team
____Assessment in all areas
____health
____vision
____hearing
____social-emotional
____general intelligence
____academic performance
____communicative status
____motor ability

_____**Appropriate placement procedures (Page 20)**
Decisions based on:
____aptitude tests
____teacher recommendation
____physical condition
____social/cultural
____adaptive behavior
____Documentation of source
____Decision by knowledgeable group
____Least restrictive environment
____education with non-handicapped
____severity of handicap
____continuum
____regular class
____special class
____special school

____home instruction
____instruction in home and institution
____supplemental services
____resource room
____itinerant teacher
placement is:
____determined annually
____based upon IEP
____close to home
____continuum of services-IEP
____local school
____potential harmful effects

_____**Confidentiality of information (Page 21)**
____Access rights
____right to inspect records
____explain and interpret
____obtain copies
____representative
____record of access
____location
____fees
____Hearings—amend or destroy

_____**Evidence of required formal review (Page 21)**

_____**Appointment of surrogate parents (Page 21)**
____Rights of child protected
____no parent
____whereabouts unknown
____ward of state
____Selected by State law

_____**Requirement of special notice (Page 22)**
____Required
____if parent requests
____if a hearing is initiated

_____**Requests for further information (Page 22)**
____From parties
____Independent educational evaluation

_____**Prehearing contacts (Page 22)**
____Parent phone contact
____prior notice
____legal services
____independent educational evaluation
____access to records
____open/closed
____child's attendance
____time-place
____Public agency phone contact
____confirm due process
____procedure

____evidence
____witness
____facilities
____date and time
____Letter to parents
____due process
____written evidence
____list of witnesses
____interpret open/closed
____date-time
____Hearing Officer's phone number
____Letter to public agency
____written evidence
____interpret open/closed
____date-time
____Hearing Officer's phone number
____Full disclosure
____material to petitioner
____material to respondent
_____**Notification of hearing (Page 23)**
____Petitioner
____Respondent
____Witnesses
____Witnesses to be compelled
_____**Procedural arrangements (Page 23)**
____Recording of hearing
____recording
____transcription
____Interpreter
____Translator
____Master list
____evidence
____witnesses
_____**Agenda (Page 30)**
____Timing and mailing
____Format

Conducting the Hearing

_____**Call to Order (Page 31)**
_____**Introductory Statement by Hearing Officer (Page 31)**
_____Opened/closed hearings
_____Introduction of participants
_____Statement of purpose
_____Swearing in witnesses
_____Procedural matters

_____**Opening of Formal Testimony (Page 32)**
- ____Format outline
- ____Opening statements
- ____Presentation of evidence and testimony
  - ____Written evidence
  - ____Witnesses
    - ____examination
    - ____cross-examination
    - ____re-examination
    - ____Hearing Officer examination
- ____Questioning witness
  - ____Party or counsel
  - ____Counsel for witness
  - ____Necessary interruptions
- ____Special considerations
  - ____Due process requirement
  - ____Failure to appear
    - ____party
    - ____witness
- ____Postponement request

_____**Summary Statements (Page 34)**
- ____Petitioner
- ____Respondent

_____**Closing Statement by Hearing Officer (Page 34)**
- ____Decision
- ____Record of hearing
- ____Right to appeal

The Decision

_____**Format of Decision (Page 36)**
- ____Rationale
- ____Personally identifiable information
- ____Suggested format

_____**Preparation and Submittal (Page 37)**
- ____Preparation
  - ____face-page
  - ____body of report
- ____Submittal timeline
- ____Conveyance method

Conveyed to:
- ____Parent
- ____Public agency
- ____Record

Appendix C

ANSWERS TO SELF-TEST QUESTIONS

Chapters II and III: Right to Education and Overview to Due Process

Right to Education Decisions: (pages 3-4)

1. B
2. C
3. B, C
4. C
5. B
6. A

Legislation Affecting Handicapped: (page 4)

7. A
8. A
9. C
10. B
11. B
12. C

Definitions:

Consent—The parent has been fully informed, in his or her native language or other mode of communication, of all information relevant to the activity for which consent is sought. The parent understands and agrees in writing to the action and understands that such consent is voluntary. (page 5)

Evaluation—Procedures used to determine if a handicap exists and the nature and extent of special education and related services required. The term does not refer to basic tests used with all children as part of a standard schoolwide testing program. (page 5)

Personally Identifiable—Information that is personally identifiable includes:

a) the name of the child, the child's parent, or other family member

b) the address of the child

c) a personal identifier such as a social security number or student number

d) a list of characteristics or other information that would make identification possible with reasonable certainty (page 5)

Notice—Written notice is required before a public agency:

a) initiates or changes the identification, evaluation or placement, or

b) refuses to do so (page 6)

Civil Action—An appeal to the courts if either party in a hearing is dissatisfied with the decision. (page 7)

Chapter V: Preparing for the Hearing

Parental Rights: True/False (page 19)

1. T
2. T
3. T
4. T
5. F
6. F
7. F
8. T
9. F
10. T
11. F
12. F
13. F
14. T
15. T
16. F
17. T
18. T
19. T

Multiple Choice: (pages 19-20)

G

Chapter VI: Conducting the Hearing

True/False (pages 18-20, 31-32)

1. T
2. T
3. T
4. T
5. F
6. T
7. T
8. F
9. T
10. F
11. T
12. T
13. F
14. T
15. T
16. T
17. T
18. F
19. T
20. T

Yes/No (pages 31-34)

21. No
22. Yes
23. Yes
24. No
25. Yes
26. No
27. No
28. Yes
29. Yes
30. Yes
31. Yes
32. No
33. Yes
34. No

Chapter VII: The Decision

True/False: (pages 35-37)

1. T
2. F
3. T
4. T
5. F
6. T
7. F
8. F
9. F